

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

253

CWP-6851-2021 (O&M).

Date of Decision: 20.04.2023.

HARINDER KUMAR

.. Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Sunny Singla, Advocate,
for the petitioner.

Ms. Niharika Sharma, AAG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

CM-15665-CWP-2021

The instant application has been filed by the applicant-petitioner under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 for seeking impleadment of Sub Divisional Magistrate, Rampura Phul as respondent No.4 being a necessary party.

The application is allowed subject to all just exceptions.

Sub Divisional Magistrate, Rampura Phul is impleaded as respondent No.4.

Amended Memo of Parties is taken on record.

The Registry is directed to tag the same at an appropriate place.

Main case

Two fold relief claimed in the present petition is firstly for seeking insertion of names of daughters-in-law and names of grandchildren of the terrorist affected families in the Red Identity Card (RIC) which was issued to the petitioner on account of being a family of terrorist victim and secondly quashing of communication dated 05.06.2018 (Annexure P-8) issued by the respondent No.2 to the Deputy Commissioner Ludhiana, has been sought whereby the petitioner has been held disentitled to avail the Red Identity Card.

Learned counsel for the petitioner also points out that during the pendency of the present petition, the respondents also directed the petitioner to surrender his Red Identity Card so that the same may be cancelled.

Briefly summarized, the facts of the present case are that the petitioner is son of a terrorist victim late Harbans Lal who was a JBT teacher (Government Employee) in the State of Punjab and was killed by the terrorists on 11.05.1988. The Government of Punjab vide its Memo No.2/115/86-RR-I/18661 dated 31.12.1986, issued instructions to the Administration regarding issuance of Red Identity Cards to the families affected by the terrorist violence. A decision in this regard had been taken in the meeting held on 16.10.1986 under the Chairmanship of the Financial Commissioner, Revenue and accordingly, Red Identity Card was issued to the petitioner on 30.05.1988.

The Department of Revenue and Rehabilitation vide Memo

No.8/188/87-RR-III/14640 dated 09.07.1987, decided to extend *ex gratia*

relief on the death of an innocent civilian at the hands of the terrorists and notified the list of kin, in the order of priority, for grant of *ex gratia* relief.

It is averred in the petition that vide letter dated 08.11.2011, State of Punjab clarified that the names of the grandchildren of terrorist victims can be inserted in Red Identity Cards along with the names of mother/father, husband/wife and their children. Instructions dated 24.02.2014 were also circulated pursuant to a decision taken in the meeting held on 23.12.2013 that names of daughters-in-law could also be inserted in Red Identity Cards along with the names of mothers of the grandchildren.

Some of the aggrieved Red Identity Card holders filed CWP No.17999 of 2014 for a prayer that names of children of a daughter of a terrorist victim be treated at par with the children of son of a terrorist victim. The above said writ petition was disposed of vide order dated 09.12.2014 directing the respondent-State that if there are applications brought at the instance of grandchildren, the Administration shall not cause a fetter to such status and that they should be treated at par. Accordingly, vide Instructions dated 18.02.2015 (Annexur P-7), the Government of Punjab conveyed its decision that if any request is made by a 1984 riot victim/terrorist affected person to register the name, such a request could be considered as per the Instructions regarding the addition of names of the grandchildren in the Red Identity Cards. The petitioner accordingly approached concerned Deputy Commissioner seeking incorporation of the names of his grandchildren and daughters-in-law in Red Identity Card, however, the respondents refused to insert the said names by placing reliance on the Instructions dated 05.06.2018 as per which the Government

Employees who were killed at the hands of terrorists were held not entitled

for the Red Identity Cards. The aforesaid communication dated 05.06.2018 is also a subject matter of challenge in the present petition.

Reply by way of an affidavit of Saroj Aggarwal, District Revenue Officer, Bathinda, on behalf of respondents No.1 to 3 had been filed wherein the issuance of the Instructions dated 31.12.1986 by the Government of Punjab is admitted. It is also averred that widow of late Harbans Lal had applied for issuance of Red Identity Card and accordingly Red Card bearing No.45/RR had been issued in the name of Smt. Krishna Devi in which the name of the petitioner and other three minor children of late Harbans Lal is also included. It is further averred that the letter dated 08.11.2011 (Annexure P-4) issued by the State of Punjab for insertion of names of grandchildren is not applicable to the case of the petitioner since the above said letter is applicable only for the 1984 riot victim families and not to the terrorist affected families as averred and alleged. It is further averred that the Sub Divisional Officer had been conferred with the powers by the Department of Relief and Resettlement for issuance of Red Identity Cards to the victims of terrorist violence and that late Harbans Lal being a Government Employee, his family is not entitled to issuance of the Red Identity Card and that issuance of the aforesaid Red Identity Card to them in the first instance was in violation of the decision taken by the Government. Accordingly, a communication was rightly sent to the Sub Divisional Magistrate, Rampura Phul, to cancel the Red Identity Card issued to Smt. Krishna Devi as being contrary to the Instructions.

No replication/rejoinder had been filed by the parties.

Addressing arguments, learned counsel for the petitioner has

placed reliance on the Memo dated 31.12.1986 which reads thus:-

“To

*All the Deputy Commissioners in the
State of Punjab.*

*Memo No. 2/115/86-RR-1/18661, Chandigarh
dated the 31st December, 1986.*

*Subject. Issue of identity cards to Victims of Terrorists-
Need for uniform proforma containing full
particulars and other relevant information.*

*It was decided in the meeting held on 16th
October, 1986 under the Chairmanship of Financial
Commissioner Revenue, that all such families affected by
terrorists shall be issued Red Identity Cards after proper
registration similar to the ones issued to Sikh migrants. These
Red identity Cards will bear in bold fetters TERRORIST
VICTIMS IDENTITY CARD which may be embossed through a
rubber stamp. This card shall contain all the data about the
family and necessary particulars about each member. The
concessions given from time to time to the family will also be
incorporated in the Card.*

*2. To have uniformity, it was decided in the meeting held on
12th December, 1986 under Chairmanship of Financial
Commissioner Revenue that a uniform proforma may be
devised at the State Head quarters and Circulated to all the
Deputy Commissioners. Accordingly, a copy of the proforma is
enclosed herewith. This proforma may please be got filled in
duplicate from the applicants. One copy of the proforma may
be kept in the Identity Card to be issued by the Deputy
Commissioners under their signatures and the other copy of
the proforma may be kept in a separate file for processing the
various concessions/facilities to be availed of by the applicant.*

Where Red Identity Cards have already been issued to victims of Terrorists, information may please be collected afresh from the applicants in the enclosed proforma in duplicate, one copy inserted in the card and the other kept in a separate file for record and further necessary action.

The above instructions may kindly be brought to the notice of all the concerned and got meticulously complied with. Fortnightly progress report about issue of cards to applicants may kindly be intimated for the information of Financial Commissioner, Revenue.

Sd/-

*The Director-cum-Deputy Secretary
to Government, Punjab- Relief and
Resettlement Department.”*

He further refers to the communication dated 05.06.2018 (Annexure P-8) on the strength whereof, the respondents initiated the process of cancellation of the Red Identity Card issued in favour of the petitioner. The same is extracted as under:-

“To,

Deputy Commissioner, Ludhiana.

Memo No: 2/12/2018-3 DM3 /16800

Chandigarh, Date 05.06.2018.

Subject:- Regarding issuance of red cards to the families of employees killed during the period of terrorism.

In reference of the Memo No. 39/RRA, dated 21.05.2018 of this department.

As per the Instructions issued by this department vide memo no. 2/115/86- RR-1/18661, dated 31.12.1986. The

families of ordinary citizens, who were killed during the period of terrorism Incident, would be issued red identity cards by the concerned Deputy Commissioners. The department has not issued any instructions to issue red identity cards to the families of government employees killed during the period of terrorism Incident.

*Sd/-
Superintendent Grade-1”*

He contends that the memo issued by the State on 31.12.1986 nowhere creates a classification of the families of the Government Employees or non-Government Employees and that the benefit of issuance of Red Identity Card was universal and non-discriminatory. He contends that by virtue of the above said subsequent letter dated 05.06.2018, the respondents are taking away the benefit which accrued in favour of the petitioner by virtue of the Memo dated 31.12.1986. The action is without any authority and is liable to be set aside. He also submits that the names of the grandchildren and daughters-in-law could also be entered in the Red Identity Card in view of the communication dated 18.02.2015 (Annexure P-7) sent by the Government after the order dated 09.12.2014 passed by the Hon'ble High Court in CWP-17999 of 2014.

Per contra, learned State counsel has opposed the submissions advanced by the learned counsel for the petitioner stating that the decision of the Hon'ble High Court in **CWP-17999 of 2014 dated 09.12.2014 in the matter of “Sohail Singh Sodhi Vs. State of Punjab and others,”** did not relate to the issue. The question that arose for consideration in the said case was regarding the alleged discrimination between children of daughters and children of sons of a riot victim. It was thus held by the Hon'ble Single

Judge that the grandchildren could not be discriminated on the said basis of the benefits that are admissible to them under the applicable State Policy. She contends that Memo dated 18.02.2015 (Annexure P-7) is thus applicable only in case the grandchildren are otherwise entitled to incorporation of their names in the Red Identity Cards issued for the terrorist affected families. Since the instructions/decision of the Punjab Government does not bring unto its fold the grandchildren for being entitled to benefits as a terrorist affected families, hence, the communication dated 18.02.2015 cannot enure in favour of the petitioner. She further contends that in view of the clarification received from the Government of Punjab, Department of Revenue Rehabilitation Disaster dated 05.06.2018, the families of the Government Employees were not entitled to issuance of Red Identity Card as terrorist affected families and accordingly, the process for cancellation of the Red Identity Card issued to Smt. Krishan Devi, widow of Harbans Lal, had been rightly initiated. It is also contended that since the petitioner has not impugned the decision taken by the authorities concerned for cancellation of the Red Identity Card, the present petition ought to be dismissed on the said score as well.

I have heard the learned counsel for the respective parties and have gone through the documents available on the record.

So far as the contention of the petitioner that the names of grandchildren of families of terrorist victim being incorporated in Red Identity Card is concerned, the documents placed on record do not suggest that names of grandchildren have been permitted to be incorporated in the said Red Identity Card. The reference to Annexure P-4 placed by the petitioner is misplaced since the said communication relates to 1984 riot

victims families. The petitioner has entered the translation in Annexure P-4 as “terrorist victims of 1984 riots” whereas the vernacular of the said document uses the expression “1984 de danga peedit parivaar...” It is evidently an incorrect translation of the document may be so for misleading the Court. It was also noticed that reply was filed by the respondents in June 2022 and the petitioner never chose to dispute the clarification given by the Department. This Court expresses its displeasure at what seems to be a deliberate attempt of a wrong translation.

Similarly, the petitioner has also relied upon the communication dated 24.02.2014 (Annexure P-5) to justify the demand for incorporation of the daughter-in-law in the subject of the said letter as “About regulation of names Red Identity Cards of the victims of the 1984 riots.” The letter is thus not applicable to the terrorist victims and applies only to riot victims.

It is also not the case of the petitioner that the policy governing the riot victims or the terrorist violence victims are not distinct or separate. Once two separately identifiable classes of beneficiaries are in existence based on intelligible differentia and they are governed by separate set of policies/decisions taken by the Government, one set of aggrieved cannot claim benefits admissible to the other by placing reliance on the Policy applicable to them unless challenge to such discrimination is raised in an appropriate petition. Since no such challenge has been raised, the wisdom of the State in creating such a distinction cannot be gone into at this stage.

The judgment of the Hon’ble High Court in CWP-17999 dated 09.12.2014 also does not come to the rescue of the petitioner as the same is not in context of the prayer advanced by the petitioner and has been

rendered in a different context, the issue being as to whether children of the daughter of a riot victim could be discriminated from children of son of a riot victim. The communication dated 18.02.2015 (Annexure P-7) is general in nature and merely permits that if any request is made by the 1984 riot victims/terrorist affected persons to register the names, the same shall be considered as per the instructions issued in this regard.

The communication dated 18.02.2015, however, does mention a decision of the Government of Punjab bearing Memo No.1/3/2012-1 DM.3/19710-30 dated 17.12.2012 to enter the names of grandchildren of the terrorist affected families similar to riot affected families. The said memo has, however, not been filed before this Court. The respondents have referred to the letter dated 09.11.2011 issued by the Government of Punjab, Department of Rehabilitation and Disaster Management about list of affected families but have remained silent qua the Memo dated 17.12.2012. Directions have already been issued to the Authorities to make such entry on a request so made. Ordinarily failure to respond to the document would entail the inferences, however, considering that the decision itself has not been produced for perusal of this Court, issuance of mandamus, without having seen the document may not be prudent. Hence, the above said relief is declined at this stage. However, the petitioner would be at liberty to submit an application with the respondent- Authorities for incorporation of names of grand-children of the terrorists affected person in terms of the Memo dated 17.12.2012. In the event of submission of such an application by the petitioner, the same shall be decided in terms of the above memo, without unduly harassing the applicant.

The same now leads to the second issue i.e. as to whether the Red Identity Card bearing No.RR-45 issued by the respondents to the family of the petitioner as a terrorist affected family could have been withdrawn in light of the communication dated 05.06.2018. I find that the stand adopted by the respondent-State is bereft of merit. The Instructions (Annexure P-1) dated 31.12.1986 were issued pursuant to a decision taken on 16.10.1986 under the Chairmanship of the Financial Commissioner, Revenue. A perusal of the aforesaid instructions clearly shows that there was no distinction or classification of the beneficiaries to whom the terrorist Victim Identity Cards were to be issued. Hence, the classification as is being suggested to be as Government Employee/Non-Government Employee is not provided for in the said instructions. The respondent-State seeks to draw its support from the communication dated 05.06.2018. I am afraid that such reliance is misconceived as the aforesaid communication has been issued in reference to Memo No.39 dated 21.05.2018. The aforesaid Memo places reliance on the Instructions dated 31.12.1986 to cull out that the families of ordinary citizens who were killed during the period of terrorism could be issued the Red Identity Card and that there were no instructions to not issue Red Identity Card to families of Government Employees killed during the period of terrorist incidents. The aforesaid clarification is not based upon any suggestive reading of the Instructions itself. Besides this, the Superintendent has purportedly issued the above said clarification. Once an earlier decision has been taken by an Authority at the level of Financial Commissioner Revenue, an Authority below that level could not have issued the said clarification. Even otherwise, the clarification purportedly drawn/issued by the Superintendent in the Department of

Revenue is neither suggested nor can be inferred by necessary inference /reading of the Memo dated 31.12.1986. It is apparently a misconceived interpretation which has led to an unnecessary harassment of the petitioner.

Consequently, the action of the respondent-Authorities to cancel the Red Identity Card already issued to the petitioner being the next of kin of terrorist victim is set aside. The respondent-Authorities are directed to restore Red Identity Card issued to the family of the petitioner, if already withdrawn, within a period of 04 weeks of receipt of certified copy of this order.

The petition is accordingly partly allowed.

Pending misc. application, if any, shall also stand disposed of accordingly.

April 20, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No