

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

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CWP-9218-1999

Date of Decision: 24.02.2023

GIAN SINGH & ANOTHER

.... Petitioners

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. I.S. Saggu, Advocate of the petitioners.

Mr. Saurav Verma, Addl, A.G. Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

The present petition seeks issuance of directions to the respondent-authorities to release the amount of Rs. 30,000/- alongwith interest on account of ex-gratia amount as per also of the State Government Annexure P-3 pertaining to relief package for persons adversely effected in terrorists violence.

2. Counsel for the petitioners contends that 12/13 armed terrorists entered the residential house of the petitioners on the intervening night of 20/21.08.1989 and killed 10 members of the family of the petitioners. A FIR No. 94/89 dated 21.08.1989 was registered with the Police Station Jhabhal. Further, Death Certificate dated 20.11.1989 reiterating the said aspect were also issued by the Sub Divisional Magistrate. The petitioners being the next kin of the deceased Harnam Kaur had applied for the grant of ex-gratia grant in terms of the State policy which was to be awarded in 03 instalments

(i) Rs. 20,000/- in cash.

(ii) Rs. 30,000/- by way of National Savings Certificates.

(iii) Rs. 50,000/- by way of Indira Vikas Patras.

3. A representation was accordingly submitted by the petitioners for grant of compensation whereupon the Sub Divisional Magistrate forwarded their case to the Government and also awarded an initial compensation of Rs. 20,000/- in cash i.e. the first instalment of the compensation. Thereafter, a sum of Rs. 50,000/- by way of Indira Vikas Patras was also given to the petitioners. The remaining amount of Rs. 30,000/- as 2nd instalment was to be paid by way of National Saving Certificates, however, the same was never paid to the petitioners. Resultantly, the petitioners approached the Deputy Commissioner, Amritsar for release of the aforesaid 2nd instalment of the compensation, however, the same was not granted. Resultantly, the petitioners filed CWP-2330 of 1997 in this Court as per which the petitioners were granted the relief against return of Indira Vikas Patras amounting to Rs. 50,000/- that has already been granted to them by way of compensation. The remaining compensation amount of Rs. 30,000/- i.e. the 2nd instalment was, however, not awarded to the petitioners. A copy of the aforesaid order passed by Division Bench of this Court dated 01.05.1997 as attached as Annexure P-6.

4. The petitioners, thereafter, filed Civil Miscellaneous Application No. 23875 of 1998 which came up for hearing on 04.12.1998, however, the same was dismissed with an observation to the petitioners to avail remedy through an appropriate independent action.

5. Thereafter, the present petition was filed, claiming for 2nd instalment of Rs. 30,000/- by way of National Saving Certificate as per the State policy.

6. Respondent-State has filed a written statement wherein it is specifically submitted that the issue in question was barred by Principles of *Res Judicata*. The same prayer was made by the petitioners earlier in point of time and the same was dismissed by a Division Bench of this Court vide order dated 01.05.1997. The said order had already become final between the parties. It was further pointed out that the State had issued a memo as per which the next of kin, who were not dependent on the deceased of terrorist violence, were not entitled to the ex gratia compensation and that the benefit had earlier been wrongly released in favour of the petitioners under a wrong policy. The above said stand of the respondent-State was accepted by the Court while dismissing the petition and no right of the petitioners was protected. Only the recovery of Rs. 50,000/- already released in favour of the petitioners by way of Kisan Vikas Patras were saved. It is submitted that the disentitlement of the petitioners vide memo dated 27.06.1995 already having been upheld by this Court, the petitioners cannot now be held entitled to the said benefit in a fresh round of litigation. He further submits that the petitioners were entitled to only a sum of Rs. 20,000/- as ex-gratia compensation and not to any other ex-gratia compensation and that the disbursement of the amount of Rs. 50,000/- was on account of mistake committed by the officials. However, since the recovery thereof had been restrained by a Division Bench of this Court, the same was allowed to remain with petitioner. It would in any case not entitle the petitioners to claim a benefit under a policy that was not applicable to him. It is contended that the incident in question took place in the year 1989 and at that point of time, the policy of 27.06.1988 was in force and the policy i.e. the relief package for persons adversely affected by terrorist violence claimed by petitioners was made enforceable w.e.f. 01.08.1992. The said policy thus came into force

after the incident in question. Therefore the compensation in terms of the later policy cannot be disbursed to the petitioners. Reference is made to the following judgment dated 01.05.1997 which reads thus:

“We have heard learned counsel for the parties and perused the paper book.

From the perusal of paper book, we find that a sum of Rs. 20,000/- was paid to the next kins of Harnam Kaur as per Government instructions issued vide No. 8/184/88-RR-3/16914 dated 27.6.1988 and Indra Vikas Patra for a sum of Rs.50,000/- x was also given to the petitioners. A clarification was sought from the Punjab Government, Relief and Resettlement Department, R. & R. Branch, Chandigarh for clarifying for payment of enhanced ex-gratia grant of Rs. 30,000/- by way of National Small Saving Certificates and Rs.50,000/- by way of Indra Vikas Patra to the sons and daughters of the deceased. The Punjab Government, however, clarified vide memo dated 27.6.1995 that the sons and daughters of deceased who were not dependent upon him were not eligible for payment of ex-gratia grant. As such, the not petitioners were/entitled to enhanced ex-gratia grant. A notice was sent to the petitioners on 22.1.1997 for return of Indira Vikas Patra worth Rs. 50,000/-. However, there was no response from the petitioners. The compensation awarded to the petitioners in the shape of Indira Vikas Patra was asked to be returned on the ground that the petitioners being major, were not entitled to the same and it has been given by mistake.

It is the admitted case that 10 persons of the petitioners' family including their mother were killed in the residential house by the terrorists. On account of death of their mother at the hands of terrorists, the petitioners were given compensation by way of cash and Indira Vikas Patra.

The State being a welfare State, it does not sound well to ask the petitioners to return the compensation awarded to them by way of Indira Vikas Patra. The State Government has itself

formulated a scheme to give compensation/relief to the family of the victims.

In this view of the matter the respondents are directed not to proceed with for the return of Indira Vikas Patra worth Rs.50,000/-. However, it will not be cited as a precedent.

Writ petition stands disposed of accordingly.”

7. Learned counsel for the petitioners, however, contends that the policy Annexure P-3 does not prohibit extension of any relief to the dependents and merely talks of the benefit admissible to the next of kin. The respondents having disbursed benefits under the aforesaid policy, they could have denied release of the remnant benefit under the same.

8. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the instant petition.

9. It is not in dispute that the incident in question in which the petitioners lost members of his family had taken place in August, 1989 and at that point of time, the policy dated 27.06.1988 was inforce. Further, a perusal of the policy Annexure P-3 appended alongwith the present petition demonstrate that the same came inforce w.e.f. 01.08.1992. Undisputedly, the said policy is prospective in nature and the disbursement of the benefits to the petitioners under the aforesaid policy is ex facie not permissible qua the incident that had taken place prior to the policy becoming enforceable. However, the respondent authorities proceeded the case of the petitioners under the said policy. The benefits so released in favour of the petitioners were found to be on account of erroneous application of the policy and the State took a decision to seek refund thereof. The petitioners approached this Court by way of filing writ petition to seek all the benefits admissible under

the aforesaid policy by CWP-2330 of 1997. The contention of the petitioners as well as the State was duly noticed and it was recorded that the benefit as claimed by the petitioners were not admissible and that he was entitled only to a compensation of Rs. 20,000/- under the policy dated 27.06.1988. The recovery was however, disallowed to the State Government while accepting their stand.

10. The claim by the petitioners to ex gratia compensation is to be disbursed in accordance with the policy inforce at the time when the incident is stated to have taken place. It is not in dispute that the compensation in terms of the aforesaid policy already stand released. Merely because some higher compensation was extended to the petitioners under a mistaken application of a subsequent policy would not ipso facto confer an entitlement in favour of a claimant to be considered under the said policy. The framing of compensatory schemes is within the domain of the State. It is also within its scope to determine the financial benefits and the non-discriminatory benefits thereunder. High Court would not by judicial interpretation extend the policy retrospectively and inforce financial burden on public exchequer, more so when the policy itself is not a subject matter of challenge.

11. I do not find that there is any legal infirmity, impropriety or illegality in the action of the respondents in not releasing the 2nd installment of Rs. 30,000/- in the form of National Saving Certificate as claimed by the petitioners under the policy which came inforce w.e.f 01.08.1992.

The present petition is accordingly dismissed with no order as to costs.

FEBRUARY 24, 2023
Vishal sharma

(VINOD S. BHARDWAJ)
JUDGE

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