

Lokendra Kumar Sengupta and ors. Vs. Union of India (Uoi) and ors.

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Court : Kolkata

Decided On : Dec-03-1992

Reported in : (1994)1CALLT405a(HC)

Judge : Susanta Chatterji, J.

Acts : [Constitution of India](#) - Article 226; ;[Evidence Act, 1872](#) - Section 115; ;
[Enemy Property Act, 1968](#)

Appeal No. : C.R. No. 7642 (W) of 1991

Appellant : Lokendra Kumar Sengupta and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Biswa Ranjan Ghoshal and ;Dipak Kumar Mukherjee, Advs.

Advocate for Pet/Ap. : Niharendu Dutta Mazumdar, ;R.P. Bahiri, ;Dipankar Mukherjee, ;Sailendra Nath Roychowdhury, ;Nilima Datta Mazumdar, ;Anjan Banerjee, ;Sakya Sen, ;Ganesh Chakraborty, ;Punderikaksha Bhattacharya and ;Sa

Judgement :

Susanta Chatterji, J.

1. The present Rule was issued on 12th June, 1991 at the instance of the writ petitioners praying, inter alia, for a Writ of Mandamus calling upon the respondents to act according to law and in terms of the Government's Resolution dated 15th March, 1971 (Annexure A4) to the writ petition read with Annexure C, letter dated 4th March, 1986 and directing the respondents concerned to pay to the petitioners their final dues on the basis of their verified claims and/or take steps to resolve to them their properties which are now in the hands of Bangladesh Government in terms of the said Resolution and Tashkent Agreement and in any event as a matter of their inalienable human rights as per relevant conventions and charter of the United Nations and for necessary directions upon the respondents to dispose of the petitioners' case in appreciation of the age and failing health and to settle their claims with immediate effect as well as to implement their accepted and admitted position as contained in Annexures 'AA' to the writ petition.

2. It is stated in details that the petitioners possessed consideration landed properties and assets, mostly in Comilla, Jessore, Khulna, Barisal, Rajsahi and Mymensingh of undivided Bengal, formerly East Pakistan and now Bangladesh. The petitioners are alleged to be freedom fighters and they are suffering from various physical ailments. The petitioners are all aged about 70 years and they are in failing health. It is placed on record that the Government of India intended for ad-hoc interim payment as per the Resolution dated 15th March, 1971 (Annexure A-4 to the Writ petition).

3. The grievances of the writ petitioners are that the respondents have not faithfully followed and are not implementing the terms and conditions of the Government Resolution, Annexure A-4 read with the relevant enactments and bilateral treaties, as referred thereto. In view of the clear admission of the Government of India the petitioners are entitled to reliefs, as prayed for, and the relevant claims and grants as indicated above.

4. The writ petition is opposed by the respondents by filing an affidavit- in-opposition sworn by Sri Dhiresh Kumar Bhattacharya, Assistant Custodian of Enemy Property, Calcutta. The affidavit has been filed on behalf of all the respondents. It is stated therein that by a Resolution being No. 12/1/71EI & EP

published in the Gazette of India dated 10th April, 1971, the Government of India, Ministry of Foreign Trade, decided to grant ad hoc interim relief in the form of ex-gratia grants from the consolidated funds of India at the rate of 25 per cent of the value of the verified claims restricted to a maximum of 25 lakhs in each case, to all, Indian Nationals and Indian Companies whose assets in Pakistan were seized by the Government of Pakistan during and after the Indo-Pak Conflict in September, 1965 and who have notified their losses to and filed claims with the Custodian of Enemy Property for India against a bond to be executed by the recipients. In the said Resolution it was also decided that such payments should be taken into account and adjusted when the property of the Indian National Companies concerned are restored to them by the Government of Pakistan in terms of Tashkent Agreement or when the amount becomes payable to them on that account. It is stated further that by public notice dated 7th May, 1971 issued by the Custodian of Enemy Property for India that the claimants in India who have already registered their claims with the Custodian of Enemy Property for India, Bombay, to submit particulars of their claims to the Custodian on or before 15th July, 1971. It was also notified that particulars of claims submitted later than 15th July, 1971 are liable to be rejected. It is also stated that on receipt of such claim/plain paper application, the Custodian of Enemy Property for India, Kaiser-I-Hind Building, Currimbhoy Road, Ballard Estate, Bombay-38, allotted claim registration numbers to the claimants and sent them printed claim application forms for projections of properties lost. In response to the aforesaid notice, it is admitted, that the petitioners submitted their applications on plain/claim papers for registration of their respective claims for their properties left by them in the then East Pakistan, now Bangla Desh. Their claims were registered and they allotted registration numbers. All the writ petitioners thereafter submitted their claims which were verified and ad hoc interim reliefs in the form of ex-gratia grants from the Consolidated Fund of India at the rate of 25 per cent of the value of the verified claims were sanctioned by the Government and paid against bonds executed by them. The details of the payments have been given in the affidavit-in-opposition. It is stated also that the Government Resolution dated 15th March, 1971 has been fully complied with, so far as the writ petitioners are concerned. It is ascertained that since the ex-gratia as envisaged in the scheme, has been paid no injustice has

been done and no discrimination has been shown in any manner whatsoever to the petitioners. The Government took a decision to pay ex-gratia to the Indian Nationals whose properties were seized as a consequence of Indo-Pak Conflict of 1965 from the Consolidated Fund of India as a measure of relief and not as compensation. Under the Scheme administered by the Department of Rehabilitation for Refugees from West Pakistan, the compensation ranged from 11.11 per cent to 20 per cent and the maximum payable was Rs. 2 lakhs. It is contended that when the Ministry of Commerce formulated the Ex-gratia Payment Scheme in 1971, the Ministry of Commerce is paying uniformly 25 per cent of the verified value with ceiling of Rs. 25 lakhs.

5. The other allegations of the writ petitioners have been denied. It is reiterated that the petitioners' claims have been settled to their entire satisfaction in terms of the Scheme.

6. An affidavit-in-reply has, however, been filed, reiterating the points taken in the main writ petition and controverting the stand taken by the respondents. It is placed on record that the respondents have corresponded with the Association of Indian Owners of Property left in East Pakistan, now Bangla Desh. The said body is an Association registered under the Societies Registration Act and there is no bar and/or impediment to grant the reliefs to the petitioners, as prayed for.

7. Having heard Mr. Niharendu Dutta Mazumder, learned Advocate for the writ petitioners, and Mr. Dipak Kumar Mukherjee, learned Advocate for the respondents, it appears that the petitioners have specifically prayed for a Writ of Mandamus commanding the respondents to act in terms of the Government's Resolution dated 15th March, 1971 (Annexure A-4) together with Annexure 'C' letter dated 4th March, 1986, and direct the respondents concerned to pay to the petitioners their final dues on the basis of their verified claims and/or to take steps to resolve to them their properties which are now in the hands of Bangladesh Government. The respondents have made it clear in their affidavit-in-opposition that they have implemented the terms of the Government Resolution dated 15th March, 1971. It is no longer a dispute that the Resolution dated 15th March, 1971 should not be implemented. Both of them have ascertained that the said terms as

envisaged in the Government Resolution dated 15th March, 1971 have to be complied with.

8. Annexure A-4 at page 59 of the writ petition indicated, inter alia, that the question of giving some relief to the Indian Nationals, Companies, etc. whose assets in Pakistan were seized by the Government of Pakistan during and after the Indo-Pakistan Conflict of September, 1965 and who have notified their losses to and filed claims with the Custodian of Enemy Property for India has been engaging the attention of the Government of India for some time. The Government of India have now decided that an ad hoc interim relief in the form of ex-gratia grants from the Consolidated Fund of India at the rate of 25 per cent of the value of the verified claims, restricted to a maximum of Rs. 25 lakhs in each case may be made to all Indian Nationals, Indian Companies against a bond to be executed by the recipients. However, if in any case this limit exceeds, it may be decided on merit. Such payments will be taken into account and adjusted when the properties of the Indian Nationals/Companies concerned are restored to them by the Government of Pakistan in terms of the Tashkent Agreement or when any amount becomes payable to them on that account.

9. Such Resolution indicated further that a copy of the resolution be communicated to the Custodian of Enemy Property for India, Bombay, and be published in the Gazette of India for general information.

10. The point of dispute is now that the said Resolution has to be implemented and the petitioners have further prayed that apart from ad hoc payment of 25 per cent, the claims must be decided finally and/or the properties be restored in the spirit of the Resolution dated 15th March, 1971. The respondents have, however, ascertained that they have complied with the Resolution dated 15th March, 1971, and ad hoc payments have been made and they will not conclude that this was compensation of ex-gratia reliefs and there is no further obligation to make final payment and to take steps in the manner, as prayed for, by the petitioners.

11. This Court, having heard the learned lawyers of the respective parties, and upon perusal of the materials on record, and in particular, looking into the Resolution dated 15th March, 1971 (Annexure A-4), comes to the conclusion that

it is not disputed that the properties of the petitioners have been seized by the then Government of Pakistan and now Bangladesh and the claims have been verified. Certain ad hoc payments are alleged to have been paid. The quantum of payment is not in dispute. The question is being posed as to whether certain further steps should be taken pursuant to the spirit of the Resolution dated 15th March, 1971. It has to be noted that more than 22 years have passed in the meantime. The people have legitimate expectations and the Government has to fulfil the promises. The theory of legitimate expectations has been considered by this Court and by the Apex Court in various reported decisions and the same is taking its shape in the proper perspective. When the claims are verified and certain ad hoc payments have been made, the matter cannot be kept in a cold storage for an indefinite period. Either the respective Governments have to proceed in accordance with law or to protect their respective rights, but the persons, who have suffered and whose rights were sought to be authenticated, and certain ad hoc reliefs have been granted, should not be left at large for an indefinite period. The persons who have got certain ex-gratia reliefs to the score of 25 per cent of the value of verified claims are either entitled to get the final settlement of their claims or to get reliefs for specific action and it is on the part of the Government to restore their properties and/or to protect their rights in accordance with law.

12. Regard being had to the materials on record, the background of the case and the settled principle of law of legitimate expectation, this Court is of the view that the respondents concerned should take effective steps pursuant to the spirit of the Resolution dated 15th March, 1971, in order to settle the claims of the petitioners finally. Such step should be taken by the respondents within a period of six months by giving an opportunity of hearing to the petitioners, for taking effective steps to settle the claims of the petitioners fully and finally, and by passing a speaking order.

The Rule is accordingly made absolute.

Appropriate Writs do issue.

There will be no order as to costs.

Let xerox copies of this order be made available to the learned Advocates on record for the respective parties on their usual undertakings and on compliance with necessary formalities.

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