

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road

File No **BHRC/COMP.** 547/09

Case of **YOGENDRA SINGH GAMBHIR**, General Secretary, Bihar Gurudwara Coordination Committee.

This application on behalf of the Bihar Gurudwara Coordination Committee has been filed seeking intervention of the Commission for implementation of the Rehabilitation Package for 1984 anti-Sikh riot victims, as contained in letter of the Government of India (Ministry of Home Affairs) dated 16.1.2006. The package covers different eventualities such as death & bodily injury and property loss in course of the riot and the migration of the victim family in the aftermath of the riot to another state. The grievance of the applicant relates to compensation for property loss and lump sum rehabilitation grant of Rs. 2 lakh to the migrant families. It is not in dispute that the compensation/monetary benefits as provided in the package are to be paid in the first instance by the concerned State Government – to be reimbursed later by the Central Government.

Notice was issued initially to the Secretary, Department of Home, Government of Bihar. Later, after hearing applicants representation, by speaking order dated 17.1.2011, notice was issued to the Central Government through Shri A.K. Saxena, Director, Ministry of Home Affairs. Shri Amir Subhani, Principal Secretary, Department of Home appeared on behalf of the Government of Bihar while Shri A.K. Saxena appeared on behalf of the Central Government on 28.3.2011 and the matter was heard in presence of Shri Yogendra Singh Gambhir. General Secretary, Bihar Gurudwara Coordination Committee and others on behalf of the applicant. Shri Saxena later faxed 'written submissions' on behalf of the Ministry of Home Affairs on 30.3.2011 which is kept in the file.

The stand of the Central Government is that the Rehabilitation Package was intended to give enhanced ex gratia/compensation to those victims of 1984 riot who had already received ex gratia/compensation from the concerned State Government before 16.1.2006. Similar stand contained in the clarificatory letter of the Ministry dated 2.8.2009 was noticed by this Commission in its preliminary order dated 17.1.2011. The Commission observed as under:-

"The Commission is at a loss to appreciate the logic of the stand indicated in the letter dated 2.8.2009 (supra). While it is understandable to deny the benefits to those who did not lodge the claim before 16.1.2006, the denial of benefits on the ground of non-payment of ex gratia/compensation prior to 16.1.2006 cannot be appreciated by any logic. There may be umpteen cases or situations where claim was lodged but due to one reason or the other attributable to the departmental functionaries, actual payment was not

made. Surely, the victim cannot be made to suffer for the inaction or failure on the part of the official machinery. Perhaps, the Government of India while conveying its clarification in the letter dated 2.8.2009 thought that all claimants had been paid ex gratia and therefore, wanted to limit the benefit of higher revised benefits under the Package to those who had received the benefits. In any view, the Commission is of the opinion that the victims can not be denied compensation for the property loss under the Rehabilitation Package simply on the ground that they were not paid the money prior to the cut-off date. Such a stand is totally arbitrary and violative of article 14 of the Constitution of India."

The Commission in course of hearing referred to its afore quoted observations. The Commission pointed out that the over-emphasis on the term "enhanced" ex gratia/compensation is somewhat misplaced, for, whenever a new package for payment of compensation (or the like) is announced the amount is usually more than the amount payable or paid earlier. It, in fact, replaces or supersedes the erstwhile scheme (if any). Normally, it is expected that the victims have already been paid a certain amount and they are to be paid the higher/revised/enhanced amount minus the amount paid, if any. The point for consideration is where payment has not been made altogether to a victim, can non-payment be the ground to deny him the revised/enhanced amount. Of course, if he did not lodge the claim by a certain date (in the instant case, 16.1.2006) the denial of the revised/enhanced ex gratia/compensation would be justified. But those who did lodge the claim but were not paid any amount by way of ex gratia/compensation, cannot be denied the benefit on the same footing or otherwise. As observed in the previous order (referred to above), there may be umpteen cases or situations where claim was lodged but due to one reason or the other – attributable to the departmental functionaries – payment was not made. Certainly, the victim cannot be made to suffer for the inaction or failure on the part of the official machinery. As further observed in the previous order, the Government of India was apparently under the impression that claimants have already been paid ex gratia and therefore sought to restrict the benefit of the Rehabilitation Package to those who had already received payment. The Commission is of the view that victims cannot be denied ex gratia/compensation for the property loss under the Rehabilitation Package simply on the ground that they were not paid any amount prior to the cut-off date. That would be an unreasonable classification and result in different treatment to similarly situated riot victims and lead to injustice. The Commission is of the considered view that such a stand would be totally violative of Article 14 of the Constitution of India.

It was submitted by Sri Saxena (and has also been stated so in the written submissions) that Rehabilitation Package was announced with the approval of the competent authority (Union Cabinet) and any alteration in the

provisions thereof can be made only with the approval of the same authority. As regards this plea the Commission would simply observe that decision of the competent authority is not binding on any judicial or quasi judicial body. If the decision is in conflict with and violative of fundamental rights of a citizen, the same needs to be suitably amended and modified. It is well settled that unreasonableness is the antithesis of right to equality under Article 14 of the Constitution and any decision or order found to be arbitrary or unreasonable would be bad and illegal and also unconstitutional. Therefore, if the approval of the competent authority i.e. the Union Cabinet is required, the Ministry/ Department would be well advised to do so.

It was also submitted that the incident took place long time back and it may be difficult for the State Governments to make a proper assessment of the extent of loss of property at this belated stage for taking any reasonable view regarding payment of ex gratia/compensation. The plea is based on surmise and conjecture. At this stage the Commission is concerned with the straightening of the legal position and removal of the lacunae. The apprehended practical difficulties lie in the realm of administrative convenience and the bogey of the so called difficulty cannot be a ground to shut out the claims altogether at the threshold stage. If and when any difficulty would arise in identifying the genuine cases or quantifying the extent of loss, it is expected, the concerned administrative agency would resolve the same in the particular case(s) applying good sense and best of judgment.

Plea has also been taken that the Rehabilitation Package is uniformly applicable to all the concerned states and a different view cannot be taken in respect of a particular state or group of persons. It is difficult to appreciate such a plea. As indicated above, in the opinion of this Commission the decision/scheme needs to be amended/modified to the extent it pre-empts consideration of claims altogether on the ground of non-payment in the past. As observed above, the Commission is of the view that such exclusion can be made only of new claims, that is, those who do not lodge the claim prior to 16.1.2006 can be prohibited from doing so afterwards, but not of pending claims. Once the policy is suitably modified, it would be applicable to all the concerned states and victims alike. There is no question of applying the scheme in a different manner in a particular state or with respect to a group of persons. The Commission would also observe that simply because no such objection has been raised from any quarter or other states, can not justify perpetuation of the illegality or wrong for all times, and therefore, the fact that such objection has not been raised so far cannot be a ground to negative the claim of the present applicants without due consideration of the issue on legal grounds.

In course of hearing Shri Saxena placed reliance on a judgment of the Jharkhand High Court in case of Charanjeet Singh vs. State of Jharkhand and others (LPA No.481 of 2008). The facts of that case were completely different. The person concerned in that case had failed to establish that he was a riot victim. As noted by the High Court, he did not possess "even a chit of paper" to establish his locus standi as a riot affected victim. Secondly, his claim stood rejected by the Deputy Commissioner, Bokaro way back in the year 1991-92 itself but he did not challenge the said order. It was only after the Central Government announced the Rehabilitation Package on 16.1.2006 that he filed the writ petition in the year 2007. It would thus appear that the case was decided on its own facts. Indeed, the issue/question was not raised or decided and therefore the decision has no relevance or bearing so far as the present matter is concerned.

Having, thus, rejected the pleas/submissions raised on behalf of the Central Government, the Commission would reiterate its preliminary decision dated 17.1.2011 and hold that such riot victims who had already lodged claim prior to 16.1.2006 would be entitled to have their case considered for grant of ex gratia/compensation on merits notwithstanding the fact that they were not paid any amount by the State Government. The Commission would hasten to clarify that this finding should not be construed as a direction to make payment in all such cases. Needless to say that all such claims would have to be examined on case-to-case basis and in all such cases the applicant would be required to satisfy the authority that he is a riot victim, and the extent of the property loss.

Submissions were also made on the second issue relating to Rehabilitation Grant to the migrant families. However, in course of hearing, it transpired that in none of the cases the victim family migrated to another state. Not being a migrant family, the question of payment of Rehabilitation Grant therefore does not arise. As such, the Commission would refrain making any discussion on the point which would be purely academic.

To conclude, the Commission would ask the Government of India in the Ministry of Home Affairs to amend/ modify the relevant clause of the Rehabilitation Package dated 16.1.2006 in the light of the observations made in this order/decision, and submit compliance report by 13.6.2011.

Copy of this order may be sent to (1) Secretary, Department of Home (Special), Government of Bihar, (2) Shri A.K. Saxena, Director (Delhi), Ministry of Home Affairs, Government of India and (3) to Shri Yogendra Singh Gambhir, General Secretary, Gurudwara Coordination Committee, Kalambag Road, Muzaffarpur.

Justice S.N. Jha
Chairperson