

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road, Patna – 15

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

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

This complaint by Bihar Gurudwara Co-ordination Committee on behalf of 35 victims of anti-Sikh riot of Muzaffarpur district has been filed for intervention of the Commission in the matter of grant of compensation under the 'Rehabilitation Package' contained in letter no.13018/46/2005-Delhi-I(NC) dated 16.1.2006 of the Ministry of Home Affairs, Government of India. The Package covers different situations such as death & bodily injuries and property loss in course of riots and migration of the victim families in the aftermath of riot to another state. The complaint is for property loss and lump-sum payment of rupees one lakh to the migrating families. As per the scheme the compensation/ monetary benefits as provided in the Package are to be paid at the first instance by the State Government concerned to be reimbursed later by the Central Government.

Notice was issued to Secretary, Department of Home, Government of Bihar and the Central Government. They filed their response and the matter was heard on various dates in presence of the officials of the two governments including Sri Amir Subhani, Principal Secretary, Department of Home, Government of Bihar and Sri A.K. Saxena, Director (now Joint Secretary) Ministry of Home Affairs, Government of India and the orders were passed calling upon, mainly, the Central Government to submit further response in the light of the observations of the Commission.

It may be stated at this stage that as per the stand of the Central Government compensation under the 'Rehabilitation Package' can be paid only to such persons who have been paid ex-gratia/ compensation by State Government earlier. In other words, those who did not receive any compensation by the respective State Government prior to earlier i.e. prior to 16.1.2006 are not entitled to compensation. This was stated by the Central Government in the clarificatory letter of the Ministry of Home Affairs dated 2.8.2009. 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 plea of Sri A.K. Saxena on behalf of the Central Government was that the Rehabilitation Package contemplates “enhanced” compensation and therefore those who did not receive any compensation at all, cannot be eligible for enhanced compensation. In its order dated 31.3.2011 the Commission observed that 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 mount payable or paid earlier. In fact, it re-replaces or supersedes the erstwhile scheme (if any). Normally it is expected that the victims have already been paid certain amount and they are to be paid higher/revised/enhanced amount minus the amount paid if any. The point for consideration therefore is where payment has not been made altogether, can non-payment be the ground to deny him the revised/enhanced amount. Of course, if he did not lodge claim by certain date (in the instant case 16.1.2006), denial of the revised/enhanced ex-gratia/compensation would be justified but those who did lodge claim but were not paid any amount by way of ex-gratia/compensation, cannot be denied the benefit on the same footing or on any ground.

The Commission would also observe that denial of the benefit of the Rehabilitation Package simply on the ground that the victims were not paid any amount prior to any cut-off date would be an unreasonable classification and lead to different treatment to similarly situate riot victims and result in injustice. Such stand would be totally arbitrary and therefore violative of the Article 14 of the Constitution of India. It is well settled that the arbitrariness and 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.

The Commission would also reject the stand of the Central Government that the incident having taken place long time back, it may be difficult for the state governments to make a proper assessment of the property loss at this stage. The plea is based on surmises and conjectures. The apprehended practical difficulties lie in the realm of administrative convenience and the bogey of so called difficulty cannot be the ground to shut out the claims altogether at the threshold stage. If and when any difficulty arises in identifying the genuine case or quantifying the extent of loss, the administrative agency concerned can resolve the same in the particular case (complaint) applying the rule of good sense and best-of-judgment.

It is relevant to mention here that as per paragraphs 3 and 4 of the same very Rehabilitation Package dated 16.1.2006 – providing for issuance of notice inviting claims from the riot victims – the Government of Bihar in the Home Department directed all district magistrates vide letter dated 27.1.2006 to invite claims/application from the riot victims. On 22.3.2006 the District Magistrate of Muzaffarpur – to which this complaint relates – submitted report with respect to six cases of damage to property with estimates of damage. On 24.10.2007 another report with respect to 29 more such cases was submitted. The District Magistrate recommended payment of monetary relief to all of them. The plea of so called administrative difficulties is therefore a bogey which cannot be accepted. If there has been delay in the matter, it is of the own making of the Central Government.

What is more important is that the claims/applications were invited by the State Government at the behest of the Central Government – apparently acting as agent of the Central Government, and therefore the Central Government at a later stage cannot back-out from its commitments and assurances. It is to be mentioned here that the Rehabilitation Package provided for constitution of committee by the respective state government to verify/scrutinize the claims and make recommendation, and the entire exercise was to be completed within a time frame – as indicated in the Package.

The Commission is conscious of the fact that the Rehabilitation Package was framed with the approval of the Union Council of Ministers and therefore no official or the Ministry by itself can amend any part of the Package but if any amendment or modification is required, the approval can always be obtained from such competent authority i.e. the Union Council of Ministers. In any case, the legality/injustice cannot be allowed to continue and perpetuate on that ground.

In course of hearing Sri Yogendra Singh Gambhir appearing on behalf of applicants submitted that for the Sikhs it is more a question of self-respect,

honour and dignity than the question of money that they are paid compensation for the property loss. The Commission shares the sentiments of the applicants. As a matter of fact, Sri A.K. Saxena in course of hearing on 11.4.2013 also seemed to share the sentiments; and he gave a solemn assurance that he would re-place the matter before the competent authority with favourable recommendation.

Having thus summed up the matter, and reiterated its earlier observations, the Commission strongly recommends that the 35 anti-Sikh riot victims of Muzaffarpur, the applicants herein, be paid compensation for the property loss without disregarding the fact that they did not receive any ex-gratia/compensation earlier.

Put up on 17.6.2013 awaiting compliance report from the Government of India.

Copy of this order may be sent to (i) Sri A.K. Saxena, Joint Secretary, Ministry of Home Affairs, Government of India, (iii) Principal Secretary, Department of Home, Government of Bihar and (iv) applicant Sri Yogendra Singh Gambhir.

Date: 15.04.2013

Justice S.N. Jha
Chairperson