

HIGH COURT OF GUJARAT

SIDDIQUEBHAI KASAMBHAI CHOKSI

Versus

STATE OF GUJARAT & 3

Date of Decision: 31 July 2017

Citation: 2017 LawSuit(Guj) 910

Hon'ble Judges: [N V Anjaria](#)

Case Type: Special Civil Application

Case No: 9082 of 2009

Final Decision: Petition allowed

Advocates: [R C Jani](#), [Snusha Joshi](#)

N.V.Anjaria, J.

[1] Though not very often, the authorities ride on wrong reasons and find out a flimsy ground to deny and deprive a person of the benefit under a governmental welfare scheme. When examined closely, the facts of the present case represent such a case where the petitioner who suffered in communal riots, was denied the assessed compensation.

[2] The petitioner has prayed to set aside order dated 24th July, 2009 passed by Deputy Collector, Petlad, and has further prayed to direct the respondents to implement communication dated 10th July, 2009 addressed by Sub-Divisional Magistrate to the Deputy Collector, the letter dated 30th May, 2009 addressed by the Deputy Collector to Collector, Anand, and also the communication dated 19th May, 2009 addressed by the Mamlatdar to the Deputy Collector, so as to award the compensation.

[3] The petitioner, having its shop to run the goldsmith business in the name of S. Meera Jewelers, situated at 4/74/1, Chokshi Bazar, Borsad, suffered in the aftermath of communal riots took place in the town in February, 2002. The incident had taken place on 16th September, 2002 when the shop of the petitioner was looted and burnt. The petitioner filed a First Information Report in respect of the incident. The Borsad Municipality had sent fire fighters to extinguish the fire at the shop and for rescuing.

The policy was announced by the governmental authorities to compensate and rehabilitate the victims of communal riots of 2002 in the State. The scheme was implemented by the State Government. Revenue Department issued Resolution dated 11th March, 2002, providing for a policy to give financial assistance and compensation to the businessmen who suffered losses in the communal riots which took place in the State in February, 2002.

3.1 The shop of the petitioner caught fire on the fateful day, that is 16th September, 2002. The fire was extinguished by the municipal fire fighters. It was submitted that a certificate came to be issued in that respect dated 20th September, 2002 by the Municipality. The petitioner applied seeking compensation under the Scheme along with several other similarly situated persons who were sufferers in the same way. A Panchnama of the place of the petitioner was also carried out by the authorities. The applications of the affected class of persons were dealt with by the competent authority. The Deputy Collector, Petlad, issued order dated 22nd January, 2003 to approve the compensation to the list of kind persons annexed with the order. In the list of nine persons found eligible to be given compensation, name of the petitioner did not figure. The Collector approved the compensation for different persons inter alia on the basis of opinion given by the Mamlatdar.

3.2 According to the petitioner, his shop was burnt and looted and he suffered damage to the tune of Rs.05.50 lakhs. It appears that petitioner produced invoices, bills and other records to support that gold and ornaments were looted which details were also mentioned by him in the F.I.R., registered at the relevant time. Other persons mentioned in the complaint were given compensation but the petitioner was kept out, though, as per his case, he was the main complainant.

[4] Heard learned advocate Mr.R.C. Jani for the petitioner and learned Assistant Government Pleader Ms.Snusha Joshi for respondent state authorities.

[5] There was no dispute that the goldsmith shop of the petitioner was looted and burnt in the aftermath violence of the riots which had erupted between the two communities. As the petitioner was not considered for compensation, he addressed a letter dated 16th January, 2006 ventilating his grievance. The contents of the said letter were disturbing. It was stated that he was made to pay several futile visits, that upon oral complaint, the Sub-Divisional Magistrate had on one occasion instructed the Mamlatdar to immediately pay the compensation. The Mamlatdar however retorted to the petitioner saying that "Maru Thay Te Tamaru Thashe" (meaning thereby that Mamlatdar stated that if the petitioner consider to do something for the Mamlatdar, the Mamlatdar would do the work of the petitioner). Even if this allegation is overlooked,

apart the said aspect, the correspondences between the authorities inter se and the reasons communicated to the petitioner to deny him the compensation showed that the authorities had been approbating and reprobating.

5.1 After a long drawn efforts by the petitioner, the Mamlatdar sent a communication dated 19th May, 2009 to the Deputy Collector in which it was stated that petitioner had made application in time. The Mamlatdar further mentioned the details of the shop of the petitioner which had suffered damage in the riot. The statement of the petitioner recorded before the police on the very day, that is 16th September, 2002, the Panchnama recorded on the next day on 17th September, 2002 and the damage certificate dated 30th September, 2002 given by Assessor one Shiva Associates, the certificate given by the Borsad Municipality on 30th September, 2002 and other necessary documents such as property card issued by the Maintenance Surveyor and the required affidavit of the petitioner formed part of the said communication. The Mamlatdar had in turn opined on the basis of all the said documents as well as the certificate of assessment given by the Assessor that the petitioner had suffered loss of Rs.90,000/-. The Mamlatdar recommended payment of compensation of the said amount to the petitioner. A further communication dated 30th May, 2009 from the office of the Deputy Collector, Petlad, was sent to the Collector, Anand (Disaster Division), wherein the Deputy Collector stated that in view of documents submitted by the Mamlatdar and in view of the opinion of the Mamlatdar, the case of the petitioner was required to be processed further for paying the compensation.

5.2 It was becoming surer that the claim of the petitioner favourably opined and considered admissible by the Mamlatdar was lost in administrative cobwebs and red-tapism. After the opinion dated 19th February, 2009 by the Mamlatdar and the consequential recommendatory letter dated 30th May, 2009, the Deputy Collector appears to have addressed another communication dated 10th July, 2009 to the Mamlatdar, in which Deputy Collector changed his stance to ask the Mamlatdar as to under what Resolution the compensation was payable to the petitioner. The Mamlatdar was asked to send the papers back.

[6] Thereafter on 24th July, 2009, the Deputy Collector addressed a letter to the petitioner in which the impugned decision was reflected. It was stated that since the petitioner was paid Rs.10,000/- towards ex gratia payment earlier, the petitioner would not be entitled to be paid further compensation under Resolution dated 11th March, 2002. It was stated that there was no provision to pay the compensation for the second time. In the said letter, a handwritten ground was added that the damage was not assessed by the survey team.

6.1 The impugned order thus recorded two grounds. First was that the petitioner was earlier paid compensation of Rs.10,000/- and the other ground was that since the survey was not undertaken by the survey team, compensation was not payable. Evidently, the two grounds mentioned in the impugned communication were quite inconsistent. This court in interim order dated 14th September, 2009 noticed the contradiction to record that in communication dated 24th July, 2009 (Annexure-K, Page 36), the endorsement made was that "for the damage caused for the second time, no survey was undertaken by the survey team and in absence of survey, no payment could be made to the petitioner". Juxtaposing this with communication dated 19th May, 2009 (Annexure-G, Page 28) by the Mamlatdar, it was in clear terms opined positive about the eligibility of the petitioner to get compensation of Rs.90,000/- which was assessed by the Assessor.

6.2 The Mamlatdar having examined the case of the petitioner and having opined favourably treating the claim admissible in aforesaid communication dated 19th May, 2009 which was based on uncontroverted facts and material, a subsequent turn-around by the authorities to deny the compensation was not justified as was without any acceptable ground. The compensation was denied on a flimsy ground that Rs.10,000/- was earlier given to the petitioner. It could not be controverted that this ex-gratia amount of Rs.10,000/- was given much prior to the date of incident which occurred on 16th September, 2002 and the said payment could not have been a ground to deny subsequent compensation assessed for the petitioner for loss and damage of his business. The earlier ex-gratia was independent of the compensation assessed under the Scheme. The ground that the survey was not undertaken by the survey team was not stated in communication dated 19th May, 2009. In the affidavit-in-reply filed on behalf of the respondents, a yet another new reason was put forth that assessment of the damage to the shop of the petitioner was undertaken by private Assessor, therefore, the petitioner would not be paid the compensation. The stand in the affidavit-in-reply was a clear attempt to improve upon by adding new technical ground.

6.3 The factum of petitioner's shop having been looted and burnt having been established, which aspect was fortified further by the certificate of the Municipality and other documents and materials mentioned hereinabove, the case of the petitioner could not have been excluded for compensation. When the first order giving compensation to nine similarly situated persons was passed and the compensation was held payable to such persons. The petitioner's case was surprising not touched and was dealt with at a later stage in the manner narrated above. The authorities conveniently played inconsistent and blew hot and cold despite the case of the petitioner was duly recommended as eligible. The Scheme

for compensation was a beneficial scheme to be construed in favour of the riot-sufferers. In order to achieve the object of the scheme, a pedantic approach or the stand filled with excuses is not be permitted.

[7] For the aforesaid reasons, the impugned decision reflected in communication dated 24th July, 2009 of the Deputy Collector along with the grounds mentioned therein are hereby set aside. The petition is allowed and the prayer in term of paragraph 18(B) of the petition is granted. The authorities are directed to pay to the petitioner the compensation of Rs.90,000/- within a period of eight weeks from the date of receipt of this order.

Rule is made absolute as above.

