



**2011 (0) AIJEL-HC 225850**

**GUJARAT HIGH COURT**

**Hon'ble Judges:S.J.Mukhopadhaya and J.B.Pardiwala JJ.**

Gagan S Sethi, Member, Special Monitoring Group Versus State Of Gujarat

SPECIAL CIVIL APPLICATION No. 14664 of ;  
CIVIL APPLICATION No. 13968 of 2010 ;  
LETTERS PATENT APPEAL No. 502 of 2010 ;  
SPECIAL CIVIL APPLICATION No. 3217 of 2003 ;  
SPECIAL CIVIL APPLICATION No. 13105 of 2009 ;  
SPECIAL CIVIL APPLICATION No. 3605 of 2011 ; 389 of 2011 ; \*J.Date :- SEPTEMBER 7,  
2011

- CONSTITUTION OF INDIA Article - 32 , 14 , 21 , 226

**Cases Referred To :**

1. Mr. Gagan S. Sethi And Others V/s. State Of Gujarat & Others, Special Civil Application NO.14664 of 2008
2. National Human Rights Commission V/s. State Of Gujarat, 2004 8 SCC 610

**Equivalent Citation(s):**

2011 JX(Guj) 1066 : 2011 AIJEL\_HC 225850

**JUDGMENT :-**

**J.B.PARDIWALA, J.**

**1** As common questions of fact and law are involved in the above captioned writ petitions/appeal, they were all heard together and are being disposed of by this common judgment and order.

The main writ petition is SCA No. 14664 of 2008, which is filed in public interest pursuance of the judgment of the Hon'ble Supreme Court of India, rendered in the case of National Human Rights Commission V/s. State of Gujarat, reported in 2004 (8) SCC 610, wherein after the communal rights of the year 2002 in Gujarat, National Human Rights Commission approached the Hon'ble Supreme Court under Art.32 of the Constitution of India, praying for setting up of a Committee for overlooking a

Special Investigation Team to be set up by the State Government, more particularly to enquire into those cases in which final reports had been filed by the local police Stations, closing the same and with regard to other related issues. The judgment and order in SCA No. 14664 of 2008 would also govern the case of the petitioners/appellants in the other connected matters being LPA No. 502/10 in SCA No. 13105/09, SCA No. 3605/11, SCA No. 389/11 and SCA No. 3217/03, which were also being heard along with the Public Interest Litigation SCA No. 14664 of 2008.

## 2 Brief facts of the case are summarised hereunder:-

2.1 The aforesaid PIL under Article 226 of the Constitution of India is filed by the petitioners for ensuring that the victims of the unfortunate Communal Riots of 2002 in Gujarat State are made available the additional relief and rehabilitation package announced by the Government of India, through the Ministry of Home Affairs. Petitioner no.1 in the main petition is a Member of the Special Monitoring Committee set up by the National Human Rights Commission, New Delhi, who heads a Non-Governmental Organization - Centre for Social Justice in Ahmedabad and the petitioner no.2 is a Non-Governmental Organisation working for the benefits and betterment of the victims displaced and affected by the riots in Gujarat in the year 2002.

2.2 It appears that State of Gujarat through its Chief Secretary has been impleaded as the 1st respondent in the PIL and the respondent nos. 2 and 3 are the Additional Chief Secretaries to the Government of Gujarat in the Revenue and Home Department, whereas Union of India through the Secretary Home Department has been impleaded as the 4th respondent.

2.3 The petitioners have sought directions against the respondents for implementing the decision of the Government of India of according sanction of additional relief and rehabilitation of victims of the communal riots. For the said purpose, the petitioners have annexed correspondence exchanged between the Ministry of Home Affairs, Government of India and the Chief Secretary, Government of Gujarat. The relevant letters are annexed at Annexure - B. It appears that letter dated 12.09.2007, addressed by the Home Department, Government of India to the Chief Secretary Government of Gujarat, initially indicated 2 categories of beneficiaries-

"(i) In case of death, involving 1169 cases, an ex-gratia assistance of Rs. 3.5 lakhs would be paid in addition to the assistance already given by the State Government.

(ii) In case of injury, involving 2548 cases, an ex-gratia assistance of Rs. 1.25 lakhs would be paid minus the assistance given by the State Government".

It is pertinent to note that communication dated 12.09.2007, made it clear that "the entire expenditure on payment of ex-gratia in case of death and injury would be borne by the Central Government. However, only those who received ex-gratia earlier should be eligible for the enhanced additional ex-gratia amount".

2.4 It further appears that a Resolution at Annexure "C" was issued by the Revenue Department, Government of Gujarat indicating that the State Government has disbursed Rs. 70.55 Crores. It also appears that the Central Government decided to sanction ex-gratia assistance by their letter dated 27.4.2007, by which the 3rd category was subsequently introduced by this letter -

"(i) In case of death, involving 1169 cases, an ex-gratia assistance of Rs. 3.5 lakhs would be paid in addition to the assistance already given by the State Government.

(ii) In case of injury, involving 2548 cases, an ex-gratia assistance of Rs. 1.25 lakhs would be paid minus the assistance given by the State Government.

(iii) For damage of residential property and uninsured commercial/industrial property, an ex-gratia of 10 times the amount given by State Government less amount already paid.

The entire expenditure on payment of ex-gratia in case of death, injury, ex-gratia for damaged residential properties and ex-gratia for damaged uninsured commercial/industrial property would be borne by the Central Government."

2.5 Consequently, the State Government was only required to disburse the ex-gratia amount to the riot victims which was sanctioned by the Central Government by the aforesaid decisions.

2.6 Further, additional relief and rehabilitation to provide compassionate appointment to the children/family members of those who died in the riots of 2002 was granted by the Central Government by their letter dated 14.5.2007 at Annexure "F", which reads as follows :-

"(a) Children/family members of those who died in the riots of 2002 will be given preference in recruitment in para-military forces, IR Battalions, State Police Forces, Public Sector Undertakings and other State and Central Government Departments by giving necessary age relaxation.

(b) The Central Government/State Governments may launch a special recruitment drive to accommodate eligible members from riot affected families.

(c) Those who had lost their jobs would be allowed to rejoin by treating the period of absence as 'dies-non'.

(d) Those who had to leave their jobs due to riots and have already crossed the age of superannuation may be given necessary pensionary benefits by relaxing the normal rules to the extent possible.

**3** The subject matter of challenge involved in the petition are as under:-

The petitioners in the PIL challenge the inaction of the respondents in -

Not implementing the decisions according sanction for the Relief and Rehabilitation of Victims of the Communal Riots in Gujarat of 2002, as per

Decision taken by the Government of India on 11/9/2007, Ministry of Home Affairs at Annexure B;

Resolution of the Government of Gujarat dated 24/9/2007 of the Revenue Department, Sachivalaya, Gandhinagar at Annexure C;

Letter of the Director in the Ministry of Home Affairs, Government of India, dated 20/27.4.2007, addressed to the Chief Secretary, Government of Gujarat, informing him of the decision of the Central Government to provide additional ex-gratia towards Relief and Rehabilitation of the victims of communal riots, Gujarat 2002 at Annexure D;

Letter by the Director in the Ministry of Home Affairs, Government of India, dated 14.5.2007 addressed to the Chief Secretary, Government of Gujarat, in respect of additional Relief and Rehabilitation of victims of communal riots in Gujarat at Annexure F;

Letter dated 29.05.2007 by Director, Ministry of Home Affairs, Government of India, addressed to an applicant seeking information under RTI, informing him that the Government of India have sent five communications, as indicated in the said letter to the Chief Secretary to the State Government of Gujarat, for implementing the Union Cabinet's decision on relief package announced in March 2007 at Annexure G;

Available list of affected persons/families/ properties at Annexure E.

as being arbitrary, discriminatory, unlawful, illegal, vitiated by total non-application of mind, based on extraneous and irrelevant considerations and in disregard of relevant considerations, contrary to the principles of natural justice, malafide, biased and violative of Articles 14 and 21 of the Constitution of India.

**4** The learned Counsel for the petitioners would contend that the respondents are duty bound to provide compensation to the riot victims as per the policy and should therefore, be directed to take immediate steps in that behalf to ensure that the riot victims are extended the benefits of the policy of Central Government at the earliest and in view of the fact that many years had passed since the unfortunate 2002 communal riots of Gujarat. On behalf of the petitioners it was contended by the learned Counsel that in view of Articles 14 and 21 of the Constitution of India and considering the Judgments of the Honourable Supreme Court of India in the cases of National Human Rights Commission Versus State of Gujarat reported in (2004) 8 SCC 610 and Consumer Education & Research Centre and others versus Union of India and others reported in (1995) 3 SCC 42, reference has been made to paragraphs 18, 19 and 22 (page 8 of the petition), by which the counsel for the petitioners contended that the riot victims should be given compensation at the earliest and their right to life under Article 21 of the Constitution of India should be made meaningful. The learned counsel for the petitioners invited

attention of this Court to the decision in National Human Rights Commission V/s. State of Gujarat reported in (2004) 8 SCC 610, wherein following observations have been made in paras 7 to 10.

"7. It is however, pointed out to us by the learned amicus curiae and the petitioners that while the High Court is monitoring the implementation of the Scheme framed by the State Government for payment of compensation to the victims, the Scheme itself is questionable in that many aspects of the Scheme are deficient.

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8. In our view, these all are issues which can be raised in the pending writ petitions before the High Court since the High Court would have the jurisdiction to consider each of the grievances raised. In fact, having regard to the nature of the claim it will be more appropriate, that the High Court should deal with the issues raised in the first instance.

9. Since this order disposes of several petitions, those persons who have approached this Court will be entitled to apply to the High Court to intervene in the pending petitions.

10. ... The further issues of law raised by these petitioners before us in connection with payment of compensation to the victims of the Gujarat communal riots which involve larger constitutional questions are left open."

**5** From the record we found that during the pendency of the petition the Government of India, issued an order dated 23.12.2008, according sanction of Rs. 50 Crores as an additional ex-gratia relief and rehabilitation package towards damage to residential property. Consequently, the State Government issued a Resolution dated 19.01.2009, resolving that the amount would be made available to the relevant District Collector for its onward disbursement and by order dated 14.05.2009, this Court gave following directions:-

"The grant received by the State Government from the Central Government under the resolution shall be disbursed in accordance with the Rules within a period of eight weeks from today.

Post this matter after eight weeks."

However, it appears that due to the moral code of conduct being in effect then, the State Government was not able to disburse the amount as directed in the order dated 14.05.2009.

**6** It also appears that during the pendency of the petition, certain further developments took place, for which the petitioners filed an additional affidavit on 25.11.2009, stating that some of the victims of riots of 2002 were earlier rehabilitated by an NGO which was running relief camps and which undertook the reconstruction of an entire colony called "Siyasat Nagar Colony", near Chandola Talav, Ahmedabad. The said residential houses were reconstructed by voluntary agencies after spending Rs.30 lacs and in 329 dwellings

comprised in 172 houses in the aforesaid colony, more than 1800 people were rehabilitated by the NGOs. It was further stated in the affidavit that on 3rd November, 2009, Ahmedabad Municipal Corporation along with Police Inspector and Police Sub-Inspector of Dani Limda Police Station demolished 329 dwellings in 172 houses of Siyasat Nagar Colony, one Madrasa and one school at Chandola Talav, Ahmedabad, where more than 1800 people were residing. The entire colony was razed to the ground without giving any notice to the occupants. In view of the above, leave was granted to the petitioners to add Ahmedabad Municipal Corporation through The Municipal Commissioner as party respondent No.5 and the Police Commissioner, Ahmedabad City as party respondent No.6 and this Court on 23.04.2010, passed the following order-

"Ms. V.D. Nanavati, counsel for respondent No.5 submits that the families displaced will be allotted plots and will be paid compensation to the tune of Rs. 5,000/- to each family for construction of new shelter, within one week.

Learned counsel for the petitioners submits that the compensation to which the families are entitled as per Government of India, Ministry of Home Affairs decision dated 27.4.2007 has not been paid, nor the order to provide benefit to persons as per Government of India decision dated 4th May, 2008 has been complied with by the State.

Mr. Champaneri, counsel appearing for the Union of India submits that Central Government has released fund in favour of the State for payment of compensation.

In the facts and circumstances, we direct the respondents to file their respective affidavits showing compliance with regard to settlement of land, payment of compensation of Rs. 5,000/-, payment of compensation in terms of Government of India decision dated 27.4.2007 and steps if any, taken pursuant to Government of India decision dated 14.5.2007, for providing employment/or pensionary benefit to those who have left jobs due to riots and crossed age of super-annuation.

Let copy of this order be handed over to Ms. V.D. Nanavati, Counsel for the Corporation, Advocate General and Assistant Solicitor General.

Post the matter on 17.6.2010 in the 1st Board.

Pendency of this case does not stand in the way of the respondents to provide the benefits as noticed above."

From the perusal of paragraph 2 of the aforesaid order passed by this Court it is evident that the order of the Central Government and the Resolution passed by the State Government had not been complied with in its letter and spirit and thus, the State Government was granted time to place the correct facts and factual position by way of an affidavit before the Court.

7 In view of the order dated 23.04.2010, the State Government filed an affidavit dated 16.06.2010, stating that 99% of the fund received from the Central Government had been disbursed amongst the riot victims. The affidavit further stated that for the

compensation to be paid in cases of damage to residential property, an additional amount of Rs. 85.75 Crores would be required. The State Government also stated that the said demand has been raised before the Central Government by letter dated 15.06.2010, and that the State Government shall have to wait for the response of the Central Government on the said additional demand, in order to disburse the additional ex-gratia amount amongst the riot victims. The Central Government also filed an affidavit dated 23.06.2010, confirming the fact that the State Government had demanded an additional amount from the Central Government and that the Central Government had asked the State Government to provide further details of the victims.

**8** The Court, after perusing affidavits filed by the State Government, and the Central Government and taking into consideration the letter dated 15.06.2010, passed following order on 30.06.2010:-

"The matter regarding relief and rehabilitation measures for the riot victims of communal violence in Gujarat of 2002 was considered by the Central Government which decided to sanction ex-gratia assistance in the following manner by their letter dated 27.4.2007 (Annexure - D, pg.23):-

(i) In case of death, involving 1169 cases, an ex-gratia assistance of Rs. 3.5 lakhs would be paid in addition to the assistance already given by the State Government.

(ii) In case of injury, involving 2548 cases, an ex-gratia assistance of Rs. 1.25 lakhs would be paid minus the assistance given by the State Government.

(iii) For damage of residential property and uninsured commercial/industrial property, an ex-gratia of 10 times the amount given by State Government less amount already paid.

2. Additional relief and rehabilitation to give compassionate appointment to the children/family members of those who died in the riots of 2002 was taken by the Central Government by their letter dated 14.5.2007 (Annexure F, pg/34) which reads as follows :-

(a) Children/family members of those who died in the riots of 2002 will be given preference in recruitment in para-military forces, IR Battalions, State Police Forces, Public Sector Undertakings and other State and Central Government Departments by giving necessary age relaxation.

(b) The Central Government/State Governments may launch a special recruitment drive to accommodate eligible members from riot affected families.

(c) Those who had lost their jobs would be allowed to rejoin by treating the period of absence as 'dies-non'.

(d) Those who had to leave their jobs due to riots and have already crossed the age of superannuation may be given necessary pensionary benefits by relaxing the normal rules to the extent possible.

3. In the present public interest litigation, the grievance of the petitioners is that about 36 families were not rehabilitated and apart from ex-gratia assistance which was given by the State, nothing is paid towards damage to residential property and uninsured commercial/industrial property pursuant to the Central Government decision dated 27.4.2007 (Annexure D).

4. During pendency of the case, the State Government rehabilitated the rest of the families. The grievance is in two fold.

(i) Ex-gratia assistance towards damage to residential property and uninsured commercial/industrial property to the tune of 10 times of the ex-gratia amount has not been paid in favour of those families; and

(ii) appointment to the children/family members of those who died in riots of 2002 has not been provided by the State Government.

5. No specific statement has been made as to what steps have been taken by the Central Government to give employment to the children/family members of those who died in the riots of 2002 in the Central Government departments, Central Government public sector undertakings or para-military forces or IR Battalions, etc.

6. It appears that the Central Government initially ordered to release Rs.50 crores by their order dated 23.12.2008 issued from the Ministry of Home Affairs/Grih Mantralaya, New Delhi, Another sum of Rs. 212.44 crores was ordered to be released by another order dated 30.3.2009, thereby about Rs.262.44 crores were released towards additional ex-gratia assistance for the victims of Gujarat riots of 2002.

7. The State Government has taken a plea that 99% of the amount has already been disbursed to the riot victims with reference to the items mentioned in the letter dated 27.4.2007 i.e. 1167 cases of death, 2548 cases of injury and towards damage to residential property and uninsured commercial/industrial property. After such release, they have received further information with regard about 752 riot victim families of 2002. Therefore, the State Government has asked the Central Government to release more amount for payment to the rest of the 752 riot victim families.

8. The Under Secretary, Ministry of Home Affairs, New Delhi, in his affidavit dated 23.6.2010 stated that an amount of Rs.333.99 crores has so far been released by the Central Government to the Gujarat Government for disbursement amongst the victims in death and injury cases and for damages to the residential properties. There is only one component of the Central Government assistance that remains to be paid to the victims involving damage to the uninsured commercial/industrial properties. It has been assessed that for the payment of additional ex-gratia amount to the victims for damage to uninsured commercial/industrial properties, an amount of Rs.85.75 crores would be required and a demand has been raised to get the budgetary support in the next batch of supplementary. Further stand taken by the Central Government is that in the month of February, 2010, the Government of



Gujarat forwarded a communication to the Ministry of Home Affairs giving the list of 752 cases for consideration for the release of Central ex-gratia assistance for damage to residential properties which is in addition to 29,467 cases considered earlier as per the list sent by the State Government. The State Government has been asked to provide sufficient and convincing reason for not including these cases in the list of victims sent earlier by letter dated 9.4.2010.

9. The learned counsel appearing on behalf of the State submits that the State Government by letter dated 15.6.2010 has already forwarded the reasons to the Director, Government of India, Ministry of Home Affairs, New Delhi, which reads as follows :-

Sub: Relief and Rehabilitation of the victims of Gujarat riots of 2002 Proposal for grant of central assistant for additional cases of damages to residential properties Regarding

I am directed to refer to your letter No. F.14034/3/2006-NI.I dated 9/4/2010 on the above subject and to say that for consideration of additional claims for damaged to residential properties, the major reasons of those cases are as under :-

1. Ahmedabad District. 327 cases .. 24252579/- Rs. loss of record for temporary time omission of name of beneficiaries in the list.
2. Dahod District. 134 cases, 11337300/- Rs. Due to taking up of re-survey process, names of beneficiaries was not possible to update in time.
3. Sabarkantha District, 291 cases, 33632415/- Rs. Mistake of summing up in the list of Sabarkantha District.

Ahmedabad District 629 cases 38005128/- Rs. beneficiaries is being sent herewith (List is appended here with)

Looking in to consideration the circumstances, revealed above, you are requested to reconsider the case and reasons, revealed above, grant may please be released at the earliest.

10. So far as the employment is concerned, we have noticed that nothing is stated by the Central Government as to what steps have been taken by the Central Government to give employment to the children/family members of the riot victims of 2002. The State Government in their affidavit has taken a plea that they have only one policy of compassionate appointment i.e. employment to the dependents of the deceased employees. There is no such scheme to give employment to the dependents of riot victims.

11. The learned counsel appearing on behalf of the petitioners apprehended that the dependents of the riot victims will also not be considered for compassionate appointment even in the offices of the State Government, but such apprehension seems to be incorrect as accepted by the learned Counsel for the State that if any dependent of deceased employee who is found to have died during the riots claims

for appointment and is found eligible, his case will be considered for such appointment.

12. In the facts and circumstances, we issue following directions for the present :-

(i) The authorities of the Central Government are directed to take a decision for release of further ex-gratia assistance for damage to the residential properties pursuant to latest requisition made. The decision in one or other way be taken and if it decides to release any amount, necessary budgetary support be raised and placed in the next batch of supplementary.

(ii) The amount of Rs.85.75 crores as would be required towards the uninsured commercial/industrial properties of the riot victims, such amount be also released, if necessary budgetary support be raised and placed in the next batch of supplementary.

(iii) They will file an affidavit giving status report by the next date and also state as to what steps have been taken by the Central Government for giving employment to the children/family members of the riot victim families of 2002.

(iv) The State Government in their turn is directed to take a decision with regard to compassionate appointment of the dependents of the riot victims in the State services or State public sector undertakings in terms of the policy decision of the Central Government as communicated by letter dated 14.5.2007. Such a decision be taken, taking sympathetic attitude towards the dependents of the riot victims.

(v) If any amount is released by the Central Government, the State Government will disburse the amount to the concerned riot victim families and report to the Court.

(vi) The parties will file status report by the next date.

Post the matter on 6th September, 2010.

Let a copy of this order be handed over to the learned counsel for the petitioners, Mr PK Jani, learned Government Pleader for the State and Mr PS Champaneri, learned counsel for the Central Government for information to the concerned officers of both the Governments."

**9** In compliance of the order dated 30.06.2010, the Central Government filed an affidavit stating that action for getting budgetary support for an amount of Rs. 85.75 Crores had been initiated (pages 223 - 227). In view of the affidavit filed by the Central Government and the statement made by Shri P. K. Jani, learned AGP in respect of grant of compassionate employment to the dependents of the victims of 2002 riots, this Court passed an order dated 23.09.2010, as follows -

"Learned counsel for the 4th respondent refers to the affidavit filed by the Director, Ministry of Home Affairs, New Delhi wherein it is stated that a sum of Rs. 1.00 Crore has been allocated as a token provision towards ex-gratia assistance for the damage to uninsured industrial/commercial properties during the year 2010-11. The

matter has been forwarded to the Finance Division of Directorate of Finance-Home, Ministry of Home Affairs, North Block and the Budget-I Section in the Ministry of Home Affairs will look into the matter. The budgetary support will now be raised by way of supplementary demand. He prayed for three weeks' time to obtain instructions relating to the time-frame by which the Union of India intends to release rest of the amount of Rs. 84.75 Crores.

Learned counsel for the State - Mr. PK Jani submits that a Committee has been constituted by Resolution dated 16/09/2010 which will submit its comprehensive scheme for grant of compassionate employment to the dependents of victims of 2002 riots. From the Circular dated 21/09/2007 we find that the Ministry of Home Affairs, Government of India has clarified as to who would be the dependent of the family members of the riot victims. At paragraph 3 therein, following clarification has been made.

[i] The children and dependent family members of those who were killed in the riots would be eligible to get the benefit. Children mean (a) son (including adopted son); or (b) daughter (including adopted daughter). Dependent family members mean (a) spouse; or (b) children; or (c) brother or sister in the case of unmarried Government servant, who was wholly dependent on the Govt. Servant at the time of his killing in the riot.

[ii] While seeking application, CPFs should mention in the advertisements etc that the children and dependent family members of those Killed in the riots should produce a certificate to that effect from the concerned District Collectors. A candidate can apply against vacancies in any State/UT if he fulfills other conditions, however, to avail of the present relaxation he has to produce the certificate from the District, wherein the victim was killed.

[iii] Five years of age relaxation may be granted to the children and dependent family members of those killed in the riots. SC/ST/OBC relaxation, as per Government instructions, will be in addition. Authority competent to grant relaxation while making compassionate appointments, shall also be competent to grant relaxation of upper age limit as specified above for making such appointment.

In the circumstances, we adjourn the case with a hope and trust that the State Government, while framing the Scheme, will keep in mind the definition as shown in Circular dated 21/09/2007 issued by the Union of India, and file its action taken report.

Post the matter on 14th December 2010."

**10** Thereafter on 14.12.2010, this Court passed following order:-

"The learned counsel appearing on behalf of the Government of India referred to the order No.13016/6/2007-NI.I dated 21.10.2010 issued by the Government of India from its Ministry of Home Affairs (HR Division : NI Section) wherein the following order has been passed :-

"Sub : Additional relief and rehabilitation to the victims of communal riots of 2002 in Gujarat.

In continuation of this Ministry's Sanction No.13016/6/07-NI.I dated 30.3.2009, sanction of the President is hereby accorded to the payment to the Government of Gujarat of a sum of Rs.85.75 crore (Rupees Eighty five crore seventy five lakh only) being additional ex-gratia assistance for the victims of Gujarat riots of 2002 as per the following details :

For damage to uninsured commercial/industrial property, an ex-gratia of ten times the amount given by the State government would be paid less amount already paid.

2. The payment of the amount sanctioned above will be arranged by the Principal Accounts Office, Ministry of Home Affairs, New Delhi on the basis of this order to the Government of Gujarat through the Reserve Bank of India in accordance with the procedure prescribed by the Ministry of Finance, Department of Expenditure, under advice to the Accountant General of the State. Only those who received ex-gratia earlier from the State Government would be eligible for the enhanced ex-gratia amount.

3. The expenditure is debitable to the Major Head '3601' 'Grants-in-aid' to State Governments (Major Head) under Grants No. 54 Other Expenditure of the Ministry of Home Affairs for the year 2010-2011.

01 - Non-Plan Grants (Sub Major Head)

01.146- Other Social Security and Welfare Programme - Other Programme

02- Additional relief and rehabilitation to the victims of communal riots of 2002 in Gujarat.

02.00.31- Grants-in-aid-General Rs.85.75 crore

Total Rs.85.75 crore

4. This sanction issues in consultation with IFD vide Dy. No. 71423/Fin.V/10 dated 210.10.2010."

It is stated that the funds have already been released for which necessary instructions have been given to the Reserve Bank of India as mentioned in the Government of India, Ministry of Home Affairs letter No. 14018/9/2008-NI.I dated 13.12.2010, which reads as follows :-

No. 14018/9/2008-NI.I GOVERNMENT OF INDIA MINISTRY OF HOME AFFAIRS (HR DIVISION, N.I. Section) ..... Lok Nayak Bhavan, Khan Market, New Delhi - 110 003, Dated : 13.12.2010

To, Shri Anshin H. Desai, Central Government Counsel High Court of Gujarat B-404, 4th Floor, Millenium Plaza, Opp. Swaminarayan Temple Judges Bunglow Road

Vastrapur, AHMEDABAD - 380 015.

Subject : Special Civil Application NO. 14664 of 2008 between Mr. Gagan S. Sethi and Others V/s. State of Gujarat & Others.

Sir, I am directed to refer to your letter dated 13.11.2010 on the above subject and to say that the Principal Accounts Office of this Ministry has already issued necessary instructions to the Reserve Bank of India on 24.11.2010 for release of Rs.85.75 crores to Govt. of Gujarat. A copy of Principal Accounts Office, MHA letter No. 11-04/Pr.A.O./MHA/Loan/GIA/2010-11/ 2697-2702 dated 24.11.2010 is enclosed.

Yours faithfully, (M.K. Chowdhury) Under Secretary to the Govt. of India Tel. 24698251"

Mr PK Jani, learned Government Pleader appearing on behalf of the State is allowed two weeks' time to obtain instructions and file affidavit whether such amount has been received by the State Government and the time frame by which the State Government intends to release the fund in favour of the concerned persons. They will also state the decision, if any, taken with regard to compassionate appointment.

Let a copy of this order be handed over to Mr PK Jani, learned government Pleader.

Post the matter on 12th January, 2011.

Pendency of this case shall not stand in the way of the respondent - State to release the amount in favour of the concerned persons."

**11** On 14.02.2011, this Court took up the matter for hearing and passed following order -

"An affidavit has been filed by the 1st, 2nd and 3rd respondents-State of Gujarat through Under Secretary, Revenue Department. It appears that the Central Government has released a further amount of Rs.85.75 cr., which has been transferred to the offices of all the 22 District Collectors by the State Government. The amount is required to be disbursed to the riot affected persons, who were identified. The State Government has taken the plea that it is not possible to provide compassionate appointments to the family members of the riot affected persons. However, we are not inclined to make any observation with regard to the same, as the question of grant of compassionate appointment is a policy decision, which is generally taken de hors normal procedure of appointment by issuing advertisement, giving opportunity to others, but in certain cases, it has been held to be in consonance with Articles 14 and 16 of the Constitution of India. As it is a matter of Government policy, we do not pass any specific order for grant of compassionate appointments. However, as we find that the amount of Rs.85.75 cr. has been transferred by the Central Government to the State, which in turn has been transferred to the offices of 22 District Collectors, we direct the respondents to disburse the amount immediately to the riot affected persons and file a list giving details of persons in whose favour such amounts have been paid. They should prepare lists of such persons for each and every district and may supply copies of

the same, if any person applies under the Right to Information Act, 2005. Post the matter on 15.03.2011 along with Special Civil Applications Nos.3217 of 2003 and 13105 of 2009 on 15.03.2011."

**12** Thereafter, State Government filed an affidavit dated 11.03.2011, stating that the State Government has released the fund to the offices of 22 Collectors as directed by this Court by order dated 14.02.2011.

**13** On 17.03.2011, this Court passed following order -

"The matter relates to payment of compensation to 2002 riot victims. Learned Government Pleader Mr.Jani has made oral statement on behalf of the State as under:

(1) Death Cases - Payment made at the rate of Rs.5 lakhs per deceased. Total 1169 1163 cases - Persons who could not be identified. - Total amount paid. 6 cases Rs.58.44 crores (2) Injury Cases - Total injured persons. - Payment made at the rate of maximum upto Rs.1.25 lakhs per injured. - Persons yet to be paid. - Total amount paid. - Unpaid amount. 2548 persons 2513 cases 35 persons Rs.31.84 crores Rs.42.55 lakhs (3) Payment towards damage of residence. - Total number of cases. - Actual loss paid by the State Government. - Central package allowed 9 times of payment than the amount paid by the State Government. - Total amount paid. - Payment could not be made in absence of details or some other reason. - Unpaid amount 29,467 cases Rs.289.10 crores 360 cases Rs.3.02 crores (4) Payments made towards uninsured commercial, industrial property damages. - Number of cases. - Amount paid. - Unpaid cases. - Unpaid amount. 19,373 cases Rs.83.68 crores 355 cases Rs.2 crores (5) Total amount paid. - Death cases. - Injury cases. - Cases of damaged houses. - Maintenance of livelihood and miscellaneous sources. GRAND TOTAL : Rs.463.10 crores already paid. Rs.58.44 crores Rs.31.84 crores Rs.289.10 crores Rs.83.68 crores.

Learned counsel for the parties wanted to address the Court as to which amount has been spent by the State and the Central Government. But, we are not recording the same in the order.

Learned counsel appearing on behalf of the petitioner submits that there are some more persons who have either not been paid or who have received ex-gratia payment and rest of the amount has not been paid.

In this connection, for the present, we are not expressing any opinion but give liberty to such individual to bring such matter to the notice of the Collector of their respective districts. The petitioners can also bring such matter of all individual before the respective collector, who will look into the matter and redress the grievances. Counsel for the petitioner will also serve copy of such application to the learned Government Pleader who will obtain instruction from respective collector and file reply affidavit in respect of such claims.

In the mean time, let rest of the persons be identified and payments be made. If necessary, the respondent - State and its officers may take help of the petitioners

for identification of such persons.

Learned Government Pleader will serve a copy of list of persons who could not be identified by the Collectors, to the counsel for the petitioners.

Counsel for the State and the Union of India will also state as to whether any decision has been taken to pay compensation to the rape victims of 2002 riots.

Post the matter on 2nd May 2011."

**14** The State Government contended before this Court that the amount of compensation received from the Central Government had been paid to all categories of riot victims, excepting a few cases where there was absence of details or some other reason and reiterated its stand before this Court that only those riot victims who have been identified and who are on the State list would be entitled to be paid the compensation, in view of the policy of the Central Government dated 12.09.2007, which clearly stated that only those who received ex-gratia earlier should be eligible for the enhanced additional ex-gratia amount. Several other persons who had either not received any amount or who had received an initial amount but were not paid ex-gratia amount, filed petitions before this Court praying for relief of granting an amount towards relief and rehabilitation.

**15** On 2nd May, 2011, this Court passed following order:-

"When the matter was taken up, Mr Mukul Sinha, counsel appearing on behalf of the petitioners of Special Civil Application No.3605 of 2011 submitted that 19 identified riot victims have not received any compensation though they brought such fact to the notice of the Collector, Ahmedabad.

In reply, learned counsel for the respondents referred to the Court's order dated 17th March 2011, passed in Special Civil Application No.14664 of 2008 and submitted that the amount released by the Central Government has already been paid to most of the riot victims. By the said order, this Court allowed individual claimants, who could not get the benefit in spite of their names shown in the list, to move before the Collector of the concerned District. He submitted that if any riot victim, whose name is appearing in the approved list, has not been paid the compensation, he can bring the same to the notice of the Collector, Ahmedabad, who will deal with the issue and, if so required, may redress the grievance. In view of the stand taken by the counsel for the State, we allow said 19 persons, who claimed to be riot victims, to move before the Collector along with copy of order dated 17th March 2011 passed by this Court in Special Civil Application No.14664 of 2008 along with document of identification in their favour. In such case, Collector, Ahmedabad on verification of the names and identity of each person in the list of riot victims may pay admitted dues within one month, but in case, if any adverse decision is taken, the Collector will intimate the ground to such claimant.

Mr M.M. Tirmizi, learned counsel for the petitioners in Special Civil Application No.3217 of 2003 would submit that individual claimants have filed their respective applications before the Collector, Mehsana; Collector, Ahmedabad and Collector,

Anand, but they have not yet been identified. If that be so, we direct that such persons and individual riot victim claimants should bring the aforesaid fact to the notice of the concerned Collector, Mehsana or Collector, Anand or Collector, Ahmedabad, as the case may be, along with copy of the order dated 17th May 2011 and document, if any, in their favour. The concerned Collector, in turn, will find out whether name of such claimant is appearing in the approved list of riot victims for release of payment. If name is so appearing, the admitted dues be paid within one month, but in case of disputed claim, ground should be communicated to such claimant.

Learned Government Pleader will inform of this order to the Collector, Mehsana, Collector, Anand and Collector, Ahmedabad who will ensure strict compliance of this order.

So far as compensation of the rape victims is concerned, in absence of any Scheme or law, such prayer for compensation to rape victims is not allowed.

Post all the matters on 27th June 2011."

**16** In view of the order dated 17.03.2011, passed by this Court, the State Government received altogether 656 applications, including fresh claims made by certain persons. This Court on 27.06.2011, passed the following order:-

"The learned Government Pleader submits after the order of this Court, altogether 656 applications were received by 16 Collectors, including fresh claims made by certain persons. Out of the 656 applications, 618 applications have been disposed of and intimations have been given to the concerned applicants. 38 applications are pending consideration.

On the request of the learned Government Pleader, the case is adjourned for two weeks to enable the Collectors to dispose of rest of the applications. They will file a fresh chart showing the details of payment made as was earlier filed and recorded by this Court on 17.3.2011.

So far as the 19 applications as pointed out by Mr. Mukul Sinha on 2.5.2011 are concerned, the counsel will hand over within two days a copy of each 19 applications of the alleged riot victims to the learned Government Pleader, who in his turn will obtain instructions whether they have filed any application and the respective applications have been disposed or and communicated to them or not."

The State Government was granted time to enable the Collectors to dispose of the pending applications and was asked to file a chart showing the details of payment made. Various Collectors of the State of Gujarat filed affidavits before this Court, most of them stating that either they have not received any application or that the applications had been scrutinized and replied back accordingly.

**17** On 19.07.2011, this Court passed following order:-



"On 27.6.2011, the Court noticed that 656 applications were received by 16 Collectors, including fresh claims made by certain persons. Out of that, 618 applications were disposed of and 38 applications were pending. The case was adjourned to enable the Collectors to dispose of the rest 38 matters and they were asked to file a chart showing the details of payment made like the earlier one which was noticed by this Court on 17.3.2011.

2. Mr Amit Panchal appearing on behalf of the petitioners in Special Civil Application No.14664 of 2008 submits that the details of 656 applications, as were brought to notice, which were received by 16 Collectors do not include the applications received by the Collector, Ahmedabad and no specific detail has been given.

3. Learned Government Pleader sought for and is allowed two days' time to file such an affidavit giving details of 38 applications which were pending consideration, all the applications which are pending consideration before the Collector, Ahmedabad and other details of payment by way of a fresh chart.

4. Post the matters on 26th July 2011 within five cases."

**18** The petitioners filed an additional affidavit on 25.07.2011, pointing out certain disparities with regard to the number of claimants and the amounts disbursed to the riot victims and the significant difference in the demand raised initially and the actual disbursement made, which disparities were clearly apparent on a conjoint reading of the affidavits filed by the State Government and the Central Government, from time to time.

**19** Taking into consideration the affidavits filed in main Special Civil Application No. 14664 of 2008, this Court passed the following order on 26.07.2011:-

Two affidavits have been filed by the respondents in Special Civil Application No.14664/2008. In both the affidavits, they have not given specific reply with regard to 38 applications which are pending consideration and noticed by the Court on 27th June 2011 and 19th July 2011, though a chart has been filed showing the details of assistance given in different type of cases but non-application of mind will be evident that they are not in accordance with the information as sought for by the Court. It is not stated as to in how many cases what is the nature of assistance for which the riot victims have not been found at the place of their residence nor any such detail has been given with regard to the cases and nature of assistance for which the legal heirs have raised this dispute. Therefore, we give another opportunity to the respondent - State to file affidavit in proper manner.

In this background we will be directing the officers to look into different affidavits filed before this Court including the affidavit where they gave the details of the persons with regard to whom further amount was to be released by the Central Government and, pursuant to which, orders were passed by this Court on 14th February 2011 in the present case and a sum of Rs.85.75 crores was released by the Central Government. They will also look into the subsequent orders passed by this Court from time to time and file a consolidated affidavit. They will specifically

notice the stand taken by the State Government as noticed by this Court on 17th March 2011 where they have given the details of persons who were yet to be identified or paid the amount for which the amount is lying with the State Government. For example, if six persons could not be identified in the death cases then they will say as to in how many cases such identification has been made after the adjudication and verification by the Court, etc. If 35 persons could not be paid towards the injury cases, then how many persons have been identified and again paid such amount out of 35 persons and like that if in 360 cases payment could not be made in damage of residence then in how many cases such amount has been paid and so on. The affidavit which has been filed to notice the stand taken at p.459 of the affidavit, which is not in consonance with the statement made earlier before this Court, further affidavit be filed within ten days.

It will be desirable that one of the officers not below the rank of Under Secretary to the Government of Gujarat should remain present on the next date to assist the Court.

Post the matters on 9th August 2011 on the top of the list."

**20** The State Government filed further affidavit on 08.08.2011, stating that there were 38 applications pending from amongst the applications received after 17.03.2011. The affidavit further stated that 99% of the total number of riot victims had been given financial compensation and that as on 08.08.2011, out of total 52557 cases only 164 cases were not given compensation.

**21** On 03.06.2011, the Central Government accorded sanction of Rs. 10.72 Crores by way of additional ex-gratia assistance towards damage to residential property and decided that an ex-gratia of ten times the amount to the victims of Gujarat Communal Riots of 2002, would be paid, less amount already paid by the State Government. The amount having been received by the State Government, it issued a Resolution dated 06.08.2011, granting permissions to the concerned District Collectors to disburse the additional ex-gratia amount towards residential damages.

**22** On 09.08.2011, after taking on record the affidavit filed by the advocates of the respective parties, this Court passed the following order:-

"While this Court passed order on 17th March 2011, noticed the fact relating to payment of compensation made in favour of kith and kin in death cases, injured persons, persons who were entitled for damage to their residence, persons who were entitled for damage to their commercial, industrial property, which was not insured, thereby noticed that in following number of cases the amount could not be paid in absence of identification :-

(i) Death Cases 6 (ii) Injury Cases 35 (iii) Damage to residence 360 (iv) Damage to uninsured commercial, industrial property. 355 Total No.: 756

Learned Government Pleader brought to the notice of the Court the progress of disbursement of amount and payment has been made to further 592 persons who

were not paid the amount in absence of identification. It is reported that still in 164 cases the amount could not be paid in absence of identification. They are pending consideration.

Mr.G.A.Oza, Deputy Secretary, Revenue Department, who is present in the Court, submits that in all unpaid cases, notices were published in the newspaper and those who contacted or identified, payment has been disbursed in their favour. In absence of any further claim, the payment could not be made in favour of 164 persons. The following chart shows the payment made in favour of different categories of persons, after the order of this Court dated 17th March 2011 :-

Sr. No.	Category of Cases	No.of cases where amount disbursed after 17/3/2011	Amount disbursed after 17/3/2011 Rs.in Lacs	Unpaid cases as on 5/8/2011	Unpaid amount as on 5/8/2011 Rs.in Lacs
1	Death Cases	03	10.50	3	10.50
2	Injury Cases	13	15.60	22	25.53
3	Housing Assistance	293	172.60	67	126.83
4	Earning Assets	283	174.44	72	25.12
	Total	592	373.14	164	187.98

So far as 38 pending applications which could not be disposed of out of new claimants, a chart has been produced and certain enclosures have been attached but the details have not been shown therein.

Learned Government Pleader submits that the details in the format as was earlier submitted in the earlier case will be filed by the next date, giving details of payment, if any, made in favour of one or the other persons, and if any application for payment is refused, then the grounds for the same.

Similar chart will be produced with regard to 19 applications which were received by the Collector, Ahmedabad and have been decided.

On the request made by the learned Government Pleader, the case is adjourned.

Post the matter on 30th August 2011."

**23** In compliance with the order dated 09.08.2011, the State Government filed an affidavit dated 29.08.2011, categorically stating as under:-

"6. I state that in view of the above, it is stated that all the steps in relation to disbursement of the amount to riot affected persons are almost complete. In very few cases the decision regarding disbursement remains. That in view of the above, this PIL has served out its purpose.

It is therefore, prayed that this Honourable Court be pleased to dispose of the petition. I state that any grievance of any individual case, be ordered to be treated separately."

**24** We have considered the judgment of the Honourable Supreme Court in the case of to National Human Rights Commission Versus State of Gujarat reported in (2004) 8 SCC 610, wherein at Paragraphs 7 to 10, the Supreme Court observed as under:-

"7. There is no dispute that the issue of compensation to the victims of the Godhra carnage is the subject-matter of writ petitions by victims and a non-governmental organisation before the Gujarat High Court. In addition, the Gujarat High Court is also in seisin of a petition filed by Citizens for Justice and Peace in Special Civil No. 3217 of 2003 in which the question of implementation of a Rehabilitation Scheme framed by the State is in question. It is however, pointed out to us by the learned amicus curiae and the petitioners that while the High Court is monitoring the implementation of the Scheme framed by the State Government for payment of compensation to the victims, the Scheme itself is questionable in that many aspects of the Scheme are deficient. For example, it is submitted, the Scheme does not provide for a realistic compensation in respect of damage to property. It is also submitted that the Scheme limits the compensation payable only to death or permanent disablement while excluding cases where the victim may have otherwise suffered grievously, for example, by burning, etc. It is also submitted that the victims of sexual offences have not been brought within the purview of the Scheme at all. It is also submitted that the Scheme should be according to the one formulated by this Court in connection with the Cauvery riots reliefs as in Ranganathan V/s. Union of India.

8. In our view these all are issues which can be raised in the pending writ petitions before the High Court since the High Court would have the jurisdiction to consider each of the grievances raised. In fact, having regard to the nature of the claim it will be more appropriate, that the High Court should deal with the issues raised in the first instance.

9. Since this order disposes of several petitions, those persons who have approached this Court will be entitled to apply to the High Court to intervene in the pending petitions.

10. Accordingly, Crl. MP No. 3740 of 2004 is disposed of. The further issues of law raised by these petitioners before us in connection with payment of compensation to the victims of the Gujarat communal riots which involve larger constitutional questions are left open."

It can be noticed from the above observations that the riot victims have a right under Articles 14 and 21 of the Constitution of India to seek compensations under Article 226 of the Constitution of India and claim benefits under the policy dated 12.09.2007 (Annexure B), and 20/27.04.2007 (Annexure D), of the Ministry of Home Affairs, Government of India, for grant of additional ex-gratia amount.

**25** It is settled law that as regards implementing the policy decision of the Government of India dated 14.05.2007 (Annexure F), this Court in exercise of its prerogative jurisdiction under Article 226 of the Constitution of India, cannot expand the scope of the Government of India policy and direct the State of Gujarat to provide compassionate appointment to the dependents of the riot victims in the State services or State public sector undertakings, and/or pensionary benefits to those who had left jobs due to riots and crossed age of superannuation, also considering that the State of Gujarat has filed a

detailed affidavit categorically making its stand clear and expressing its inability to accept the decision of the Government of India dated 14.05.2007.

**26** The State Government has over a period of time, disbursed the amounts received from the Government of India to the riot victims eligible to receive the additional ex-gratia amount, under the relief and rehabilitation package dated 20/27.04.2007 (Annexure D) and after following the decision dated 12.09.2007 at Annexure B, of the Ministry of Home Affairs, Government of India.

**27** As the State Government has disbursed the additional ex-gratia amount received from the Central Government to the identified beneficiaries of the 2002, Gujarat Communal Riots, in terms of the relief and rehabilitation policy of the Government of India, it would not be permissible to direct the State Government to accept subsequent claims of the persons whose name never existed on the State list of riot victims.

**28** We direct that the State Government shall expeditiously dispose of all pending applications of persons claiming to be riot victims, whose names are existing on the State Government list of riot victims, and which are pending adjudication in the office of the District Collectors in the State of Gujarat, in accordance with the policy dated 12.09.2007 (Annexure B) and 20/27.04.2007 (Annexure D), and the office of the District Collectors shall inform the concerned persons of such decision.

**29** In the above view of the matter, we are of the opinion that this Public Interest Litigation can now be closed as we are satisfied that the State Government has, over a period of time, disbursed the amount received from the Government of India to the riot victims eligible to receive the additional ex-gratia amount under the relief and rehabilitation package dated 20/27.4.2007. All the Writ petitions, appeal and CA stand disposed of accordingly with no order as to costs.