

# Drops that make the Ocean

Part-2

From F.I.R. to Policy Changes an Account of  
C.S.J.'s Response to Communal Violence



Centre for Social Justice

## Drops that make ocean: Part-2

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Copies : 500

First Edition : April 2012

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Design : Rajesh Patel



Printer : Lipi Graphics

Educational material for easy circulation

Acknowledgments:

1. Nupur
2. Anuradha Gharti
3. Nadim Nikhat

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# Foreword

The Ghost of Hamlet continues to haunt even though the body was buried long back, Ghosts are metaphors for unfinished business, the biggest unfinished business in Gujarat remains the 2002 riots rehabilitation of the victims. A 20 day violence can leave a generation of people as internally displaced, we thought these were stories only from the past. A modern Democratic socialist republic would give itself one of the most brilliant constitution and a robust democracy which has tested itself again and again, still has large loopholes especially when it comes to people uprooted due to internal violence. The situation gets further problematic when the state is party to invisibilization of such an endeavor. We still wonder why the Government of India refuses to acknowledge internally displaced people which has been recognized as an internationally known term to identify and provide relief and rehabilitation to a set of people affected by internal violence. In fact hiding behind terminologies riot affected, violence affected and such other meaningless descriptions only lowers the dignity of both the state and the judicial instrumentality.

This document is a bid to reestablish the case that the Gujarat genocide produced over 2 lac people who deserved not relief but compensation, and not just compensation, reparation.

The last Public Interest Litigation that was dealt by the High Court of Gujarat only established that a unwilling state can delay payments of dues by over ten years and are not liable to pay any interest for such delay, when even in simple motor accident claim late payment insurance to companies is automatic. The words reparation and compensation are still what we are struggling for not only in Gujarat but many other endeavors

The promised Communal Violence Bill had these words but the massination of a divided Civil Society and disinterested political party has put the Bill in the back burner this booklet is one more salvo in that effort of establishing compensation reparation as a right and that International standards established by the UN as IDPs becomes applicable to India.

Gagan Sethi

# 1. Introduction

“Gujarat” the echo of the name of this state is being heard far and wide, it is the iconic state that gave India Mahatma Gandhi. Today, it is viewed as one of India's most promising states, in terms of industrial development and infrastructural development that has attracted people from across the globe. These associations with this state are all over the virtual world, but there is a strong association that has been looming large on Gujarat's horizon, the horror of the “Gujarat Carnage of 2002”, thousands of Muslim men women and children, slaughtered, hurt and displaced.

The gruesome communal conflict that modern India witnessed on television are memories that Gujarat has not been able to deal with for 10 years. The event only refreshed the memories of partition, and the following inaction of the state to take action against the perpetrators left a large section of the society waiting for justice and reparation.

India has the history of the conflict between the executive and the legislative branches of the State on the one hand and the higher judiciary on the other over the issues of fundamental rights and the limits on the powers of the State to derogate from them in the name of 'public interests' and the obligations of compensation that attend on their denial<sup>1</sup>. The gruesome killings of the Sikhs was compensated almost 20 years later, still many such incidents have yet not been compensated adequately. Reparation is very closely linked to Justice, but replacing life, emotional bonds with a place or even a part of the body that is amputated is not possible. But, injuring the dignity of a person/ community and walking away without even acknowledging what happened can be socially very damaging.

Just as the situation of violence deteriorated in 2002 with the continuous violence, people lost their lives, property

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<sup>1</sup>Lloyd Rudolph and Susanne Hoerber Rudolph, “Judicial Review Versus Parliamentary Sovereignty: The Struggle over Stateness in India”, *Journal of Commonwealth and Comparative Politics*, 19, November 1981, pp. 231-256

and even injured themselves. The first interim relief that they received was the stay in the relief camps, these relief camps were raised by the Muslim community themselves and most civil organization pooled in to help. The government came in very late to provide with grains and some menial cash doles of Rs 1250, this was given to those families who were living in the camps. After that, a team of surveyors were sent across to evaluate the losses, based on the survey report compensation was disbursed.

Earlier in 2002, the Centre had made available Rs 155 crore to Gujarat for providing relief and rehabilitation to the victims. The state government used Rs 136 crore and returned Rs 19 crore to the Centre. The Honorable Supreme Court of India disposed off the Writ petition filed by the National Human Rights Commission by an order which is reported in (2004 8 SCC 610). The order in pertinent part left the issue of

compensation to the victims to be decided by the High Court.

The government returned 19 crore claiming that it had already disbursed compensation and rehabilitated the victims. It is amazing the state government in 2007 had acknowledged that there are still people living in relief colonies and have not been able to return to their original homes. Most of the victims had continued their fight for justice all this while. An internal stock taking by the Ministry of Home Affairs however, found the relief too minuscule for victims who were rendered homeless after their residences were damaged or burnt down. The compensation paid in 2002 to the kin of 1169 deceased was decided at Rs 3.5 lac for 2548 injured upto Rs 1.25 lac per person based on the type of injury. The residential and commercial compensation was based on the evaluation done by the surveyors.

## 2. Role of Centre for Social Justice

Recuperating from the grief of the 2001 earthquake, the state was already dealing with a natural crisis. The out break of communal clash in 2002, which was well carried out by the state machinery left the civil society wretched. The indifference of the state left the civil society with no option but to take the plunge of danger. Several civil society organizations had to take on the responsibility of ensuring the safety and proper care of the people who were being driven out of their areas, they were left to the mercy of only the civil society. Most of them took up the roles of, providing relief materials, providing shelters etc. But an important component of legal remedy was not being looked at.

Centre for Social Justice, has been dedicated to legal advocacy it saw it self as playing an important role in paving a wave for a long term legal battle that would be needed to make justice possible for these people who had lost all hope.

### **Specific interventions that CSJ took up**

#### ***Legal survey and data collection from riot victims***

C.S.J. undertook the responsibility of co-ordinating the legal survey undertaken by Citizen's Initiative<sup>2</sup>. The Litigation Team as a part of the larger group of Citizen's Initiative visited various camps immediately after the riots to collect information from the victims. The form for collecting information was finalised by C.S.J. in consultation with other NGO's. The forms served two purposes i.e. acted as complaints as well as they were analysed to find out the key trends during the riots. Volunteers from C.S.J. and other organisations collected about 3000 forms from 17 relief camps in Ahmedabad.

Based on the forms collected from the camps a consolidation was done in order to capture the incidents. 80 key incidents were identified and First Information

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<sup>2</sup>An alliance of various organization and individual that was formed specifically to monitor the events that were unfolding during 2002

Reports filed for them. Over 200 FIR's were filed and a total of 65 complaints were sent by registered post to the Police Commissioner's office in Ahmedabad. The District Centres undertook similar interventions. The FIR analysis also brought out the key trend of the communal violence.

### **High Court and Supreme Court intervention**

The centre filed a Public Interest Litigation asking for a CBI enquiry in Ahmedabad, also a petition for joining as partners to the PIL filed by the Karuna Trust, questioning the jurisdiction of National Human Rights Commission (NHRC). The Supreme Court had issued a stay on the proceedings. The centre was also involved in drafting the PIL for the Supreme Court for independent investigation of the incident. A report to the minority commission and the NHRC was also submitted. It has also submitted a notice to the concerned authorities regarding the disparity in the compensation amount announced by the government for the victims of Godhra train incident and its aftermath.

### **G. T. Nanavati and K. G. Shah Commission<sup>3</sup>**

The Govt. of Gujarat had constituted the G. T. Nanavati and K. G. Shah Commission to enquire into the various aspects of Communal riots. C.S.J. had filed a detailed affidavit in the K. G. Shah commission based on the survey conducted in Ahmedabad. The survey has been published in 'HARD FACTS'<sup>4</sup>. The Litigation Cell had drafted and filed various affidavits on behalf of C.S.J. and its various constituents. Affidavits were also prepared on behalf of certain victims, which were later filed in the commission. The Litigation Cell also provided professional services to other NGOs/activists in filing affidavits before the Commission. The district centres at Sabarkantha and Bharuch had filed in all five affidavits in the K. G. Shah Commission based on the data collected from the survey.

### **Media scan**

C.S.J. systematically undertook collection and classification of various newspaper reports, which were helpful in various ways. A photo documentation of the various incidents was also undertaken.

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<sup>3</sup> This commission was appointed by the Government of Gujarat to investigate the riots.

<sup>4</sup> Citizen's Initiative (CI) a collective of 39 NGO's based in Ahmedabad was set up to respond to violation of the rights of the minorities resulting from continuing violence against the minority community. As a part of the strategy, the CI undertook a survey of almost 2800 Muslim families affected by the violence and staying in the camps in Ahmedabad. HARD FACTS was based on the findings of the survey.



### ***Intervention at district Level***

Intervention in the districts of Sabarkantha, Banaskantha, Bharuch, Bhavanagar and Vadodara were directly taken up. Lawyers from the centre were part Shanti Samitis, filing forms in relief camps, filing FIRs, where the same was not been done. A team of lawyers from Bharuch and Kutch also helped the centre

in its endeavours in Ahmedabad.

### ***FIR analysis of Panchmahals***

As a follow up of monitoring riot-related criminal cases in Panchmahals, the Litigation Cell spent two days at Halol and Kalol. Six important cases were undertaken and various aspects such as details of the FIR, Charge Sheets, private

## **Karuna Trust V/S State Of Gujarat**

The main issues of this case were communal violence, Human Rights violation, Locus Standii of NHRC and related issues. This case has been transferred to the Supreme Court.

Karuna Trust a registered organisation had filed a PIL in the High Court, purportedly in public interest challenging the jurisdiction of the NHRC to get involved and ask for reports from the government regarding the Communal Violence, especially when the government had already appointed a commission of enquiry under the Commissions of Enquiry Act for conducting an enquiry into various aspects of the communal violence. The backdrop of the case was that riots had broken out across the State of Gujarat following the Godhra train carnage and there had been many instances of mass killings of the minority community. The state law and order machinery had totally collapsed in the initial few days of the seemingly well-organised and well-planned attacks across the state.

The litigation team was involved in drafting and filing of an application requesting the court to allow it to be a joined as a party in the Karuna petition. The entire matter has since been transferred by the Supreme Court to itself as according to the Supreme Court the issues involved certain questions of law that would best be decided by the Apex Court. CSJ was also actively involved in representing NHRC's case before the High Court although the advocate on record and the Senior Counsel were directly engaged by the NHRC itself.

statements, if any, etc. were analysed.

### **Support to the National Human Rights Commission (NHRC)**

C.S.J. helped in organising and facilitating the visits of the NHRC team. It also helped in categorising the complaints received by the NHRC and translating them in English. NHRC also sought the help of the centre for their work in Gujarat. The Litigation Cell had through the Human Rights Monitoring Group been in constant touch with the Special Rapporteur and provided such service as and when required. The Centre also undertook two surveys to look at the extent of compliance of the NHRC directives. NHRC in its deliberations felt the need to assess the situation on the ground with a special focus on those who have been internally displaced. So, NHRC appointed C.S.J. to conduct the survey, to locate the displaced people, and where they are staying, also to assess the economic rehabilitation if any. A detailed investigation of this kind will help concretise the extent of problem and also help a concrete planning to be done in form of future course of action. *National Human Rights Commission suo-motu took cognizance of the issue of inadequate rehabilitation provided by the state government to the victims of the communal riot and passed an order on 07/05/03 for monitoring the relief, rehabilitation and resettlement of victims / families. Mr Gagan Sethi from centre for Social Justice was*

*appointed as a member of this monitoring committee along with special representative or NHRC Mr P.G.J Nampoothri.*

### **Internal Displacement**

The struggle of fighting for the death of their loved ones did become a part of the public consciousness but there was a larger problem that was growing constantly, people who were displaced from their original residence, most of them either fled the state or had settled in other villages or towns. Almost 2 lac people were displaced by the this tragedy, a large section of the people had found shelter in homes that were built by civil society organizations and individuals for humanitarian purposes. These houses were built in various districts and at different times, all of them were not constructed at one go, neither were they built by a single agency.

The humanitarian intentions of most of these agencies did not understand the long term needs of the people who were displaced, it was also important that these people be recognized by the government who had been uprooted by a tragedy that was instigated by the state itself. It became necessary to reveal the conditions of the IDPs who from the relief camps never went back to their homes but were forced to live in shelters provided to them as charity. The shelter did not take into consideration issues of livelihood, education and basic amenities that a

## **BYB v/s State Of Gujarat**

The main issues of this case are Riots, Human Rights violations, Police Complicity and Improper Investigation. This case has been filed in the Supreme Court of India.

After the Godhra train carnage on 27-2-2002, riots had broken all over Gujarat. Life and property of the minority community was singled out by the mobs that ruled the roost for more than 72 hours after a call of “Gujarat Bandh” given by certain parties against the train carnage. During this time one Ms. BYB aged about 20-21 years along with a group of 16 other family members left their village in search of a safer place. On 3-3-2002, the group was however waylaid on the way and most of women raped and killed by the mob.

The hooligans also raped the complainant. Out of 17 persons only 3 persons viz. the complainant, Ms BYB and two children aged 7 yrs and 4 yrs survived the attack. She filed a FIR at the Limkheda police station on the very next day and later filed another additional FIR at the Godhra Police station. She had also given a statement before the Executive Magistrate at Godhra and a written complaint to the District Collector (by fax). After investigation the police filed a final report in the court of the learned JMFC at Limkheda (the court responsible for committal of cases to the sessions court).

The police requested for the grant of “A Summary” in the case, as according to the investigation officer, the actual perpetrators of the offences were some other unidentified persons and further investigations would be necessary. The Ld. JMFC allowed the request thereby effectively consigning the case to cold storage. The centre has been consistently following up the case and had managed to convince the NHRC to take up the matter in the Supreme Court.

A CBI inquiry was ordered and the case was reopened for investigation. The accused were arrested. The trial ended in conviction of 13 of the 20 accused, it became a landmark case because it was for the first time in post independent India that a communal riot related rape case was established through a judicial process.

citizen is entitled to. There was no identity that would define their existence. The State government did not even acknowledge their existence.

CSJ and Janvikas played a major role in visibilizing the existence of internally displaced people by-

- Conducting preliminary study, based on the United Nations Guiding Principles on Internal Displacement
- Preparing a status report on the rehabilitation of victims
- Sharing and sharing the status report to the Planning Commission, and to the National Integration Council.
- Filing a complaint on the issue of continued internal displacement in Gujarat before the newly constituted National Commission for Muslims (NCM)
- Meeting the Prime Minister Dr. Manmohan Singh and submitting to him a list of demands on behalf of the internally displaced people of Gujarat.

The status report was based on a field survey, which recorded the existence of 40 plus colonies across Northern and Central

Gujarat and over 4,000 families in the first survey round. The study was updated twice. The update done in October 2005, listed 47 colonies housing 5,170 families. The most recent update, has recorded the existence of 86 colonies and more than 6,000 families.

CSJ and Janvikas initiated to address the issue of internally displaced people through Aantarik Visthapit Hak Rakshak Samiti (AVHRS) which was formed in February 2007 this group was formed of volunteers from the community who had been tirelessly working for the rights of the affected people. It was necessary to give space to a people's organization that would emerge as a strong group that would also be a voice of from within for its own people. . The next move to take the plight of Internally Displaced to Delhi for the public hearing, it was successfully carried out by AVHRS. The public hearing was successfully organized at Delhi on 4th April 2007. 250 representatives of displaced families took part in the public hearing and their representatives met NCM, NHRC and Election Commission of India.

### 3. The Saga That Continued...

It took just 6 years for the largest democratic republic of India, when the united PROGRESSIVE alliance led Central Government has at last considered the Gujarat Riot- 2002 victims at par to the victims of Anti Sikh Riots- 1984 and whereby promised to provide compensation to 2002 riot victims. Technically, it meant that the State Government and Central Government have to share the burden equally i.e. for death state and centre has to provide 3.5 lakh each, but the BJP led Gujarat Government had out rightly refused to even acknowledge the pain and loss suffered by the victims and declined from giving its share of 3.5 lakh.

Though the Compensation promised was not equitable to the 1984 package keeping in mind the depreciation of value of rupees but even then it was a sigh of relief for the victims as well as the NGOs and meant more than just monetary compensation rather acknowledgement of their citizenship.

According to government data, 1169 people have lost their lives in the riots subsequent to the train carnage on

February 27' 2008, including 59 persons died in the burning of the train; 2548 persons injured during communal riots of year 2002 and many have lost their properties and suffered financial loss due to damage/loss to residential, commercial and industrial properties.

In February' 2008 the Central Government announced that the riots victims of the Gujarat would be given compensation at par with that awarded to the victims of anti-Sikh riots in 1984. Accordingly, a package was released as per the description given below:

1. Rs. 3.5 lakh will be paid to the kith and kin of 1,169 riots victims in addition to Rs. 1.5 lakh, amount paid by the State Government;
2. A total of 1.25 lakh minus the amount already paid will be paid to 2,548 people injured in the riots; and
3. A total package of money equivalent to 10 times the compensation paid by the State after riots minus the amount already paid will be paid for financial loss due to damage or loss to residential, commercial and industrial properties.

It was also provided that entire process of

distribution of this special package should be completed before October, 2008 and the report of the same had to be sent to the State government. The State Government had to verify the claims, distribute compensation and issue utilization certificate to the Central Government within 45 days i.e. December 15' 2008.

Further, letter dated 14.5.2007, the state Government was informed by the Director in the Ministry of Home Affairs, Government of India, in respect of additional Relief and Rehabilitation of victims of communal riots in Gujarat that the Central Government has approved to:

- Give preference to children/family members of deceased victim in recruitment by giving necessary age relaxations.
- Launch a special recruitment drive to accommodate eligible members from riot affected families.
- Allow persons who had lost their jobs to rejoin by treating the period of absence as “dies-non”.
- Give necessary pensionary benefits by relaxing the normal rules to the extent possible to those who had to leave their

jobs due to riots and have already crossed the age of super-annuation.

These benefits do look very promising, but the million dollar question still remains is whether the state government is willing to disburse these. There was an indefinite delay in releasing these amounts to the people. A PIL was filed by CSJ and AVHRS, to demand these claims. AVHRS was strategically looked at as a voice from the within the community.

#### **HIGHLIGHTS OF PIL**

[\(http://www.indianexpress.com/news/social-activists-move-court-see-full-compensation-for-godhra-victims/399937/\)](http://www.indianexpress.com/news/social-activists-move-court-see-full-compensation-for-godhra-victims/399937/)

On 15.12.08, Mr. Gagan S Sethi (Member Special Monitoring Team, NHRC) and Yusuf Sheikh (Convener-Antrik Visthapit Hit Rakshak Samiti) had filed this PIL in the High Court of Gujarat (Special Civil Application No. 14664 of 08) before the Bench of Hon'ble CJ Mr. KS Radhkrishna and J Mr. Akil Kureshi seeking-Annexure 1.

The Ministry of Home Affairs in 2007 had announced additional ex-gratia payment for those whose residential properties had been damaged during the 2002 riots. Two years on, the Government is yet to release the full amount it had promised

Indian Express, Ahmedabad, 13.02.09

<http://www.indianexpress.com/news/centre-yet-to-release-rs-212.44-crore-promised-to-victims-of-2002-riot.../423380/>

- To complete disbursement of the compensation to the riot victims by the Government of Gujarat with respect to death and injury;
  - To release complete compensation package by the Central Government with respect to loss of residential, uninsured commercial and industrial properties; and
  - To set up institutional mechanism for age relaxation in recruitment, special recruitment camps, pensionary benefits and rejoining process.
- Disbursement on the part of Gujarat Government is complete to the extent of the funds sanctioned by the central government;
  - Disbursement of compensation package released for death and injury is completed and there is no discrepancy in disbursement; and
  - The process of payment of compensation for loss to residential property is initiated in line with the new funds released by the Central Government i.e. to the extent of 19.05% of the total entitlements.

Precisely, it was filed against the inaction on the part of both State and Central Government in respect of the decisions taken by the Union Cabinet towards grant of additional relief package to the 2002- Gujarat riot victims.

<http://gujarathc-casestatus.nic.in/gujarathc/casewise.jsp?ct=SCA%3DCivil&cn=14664&cy=2008>

An illustrative list of injured person who were not given any compensation, was given to the Court urging payment of compensation to the listed injured persons and to set up a monitoring mechanism for the disbursement process.

A Notice was issued to the Gujarat Government as well as Central Government on 17.12.08. Meanwhile, the proceedings were adjourned 2 times. On 12.02.09, the State Government has filed a counter affidavit In the High Court of Gujarat, where it was argued that-

But till the filing of this PIL i.e. December 15 2008, the Central Government has sanctioned package only towards the compensation for the death and injury but not for the loss of residential and uninsured commercial/industrial properties.

Just after 8 days on 23. 12. 08, the Ministry of Home Affairs, Government of India has issued an order for sanctioning Rs. 50 Crore towards the part payment of compensation for loss to residential property, which amounts to only 19.05% of the total eligible compensation. Further, no amount has been sanctioned for uninsured industrial or commercial property. Accordingly, 18,230 (urban) and 11,237 (rural) i.e. total of 39,467 cases of loss of residential property. In pursuance of the above Order, on 19.01.09, the Department of

Revenue, Government of Gujarat has issued a circular for the said purpose.

### **Bone of Contention**

The issues here are that-

1. Why even after 2 years of the announcement, only 19.05% compensation is being paid and that is too only towards loss of residential property?
2. What about the rest of 80.95% of the compensation with respect to residential property? and
3. Why the Government of India has not released funds for compensation towards loss of uninsured commercial and industrial property?
4. What mechanisms have been set so far regarding age relaxation in recruitment, special recruitment camps, process of rejoining and pensionary benefits etc.?
5. What is the mechanism for time bound disbursement of Compensation? and
6. What is the monitoring mechanism for ensuring information flow, transparency and accountability of the process?

On 11.2.2009 The government of Gujarat filed its initial affidavit in response denying the claims of the petitioners and contending that sufficient measures had been taken for redressal of grievances of the riot affected. On

31.08.2009 a further affidavit was filed by the State of Gujarat reiterating claims that nothing more remained to be done in the matter of rehabilitation. 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.

On 23.06.2010 The Central Government also filed an affidavit, 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. An order No.13016/6/2007-NI.I was 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.

14.2.2011 :The high 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.”*

19.07.2011: The Gujarat High Court passed the 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. ANNEXURE 2*

*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.*

27.05 2011:- The petitioners filed an affidavit, 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.

26.07.2011:- The High court recorded as under:

*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.*

29.08.2011 The State Government filed an affidavit 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.”*

## 4. Displacing the Displaced

The morning of 3rd of November had men, women and children from the 300 house around Chandola lake run for their lives. The police with 4 jeeps, and bulldozers just barged into the area and started razing all the houses. Not giving people enough time to pick up their belongings. The area wears a sorrowful look, with men, women and children are picking remains of their houses. Most of them standing in anticipation for the earth to split apart so that they can search for their things. There were about 70-80 police men who barged into the area, some with uniforms some in civil dress. The police went on with this process till 4 pm people ran around for help but in vain.

Kalmuddin's newly white washed house and tea stall were just at the entrance of the area, the police who came in told him in 10 minutes remove whatever you can. He was among the few lucky who managed to salvage some things, but says "3000 cash is still lying under the debris;" A few days before some people had come for a survey, they gave Kalmuddin a slip that had his name and a number,

promising him that he will be provided an alternative shelter, he mentions that the surveyors had also taken his photograph near his house. Kalmuddin claims that the police came broke down the houses claiming that the Bangladeshi's living there were illegal migrants and were antisocial elements, Kalmuddin further says that, he is from UP and there are 25 other houses there who belong to different communities hailing from different parts of Gujarat, Rajasthan, UP, Bihar why did the police bracket us with them? Pandit locked his house in the morning to set out for work, he returned to the debris of his house, he is left with just the key to his house. Md Haroon Gulam Rasool, is a father of 5 children he has no shelter, his youngest daughter had been pointing in the direction of his house, he does not know where to take her and what to feed her.

Along with the police there were other local people from surrounding areas who came in to loot the goods. There were trucks that came in immediately and started sorting out the aluminum, when the residents protested, they said that the

police had negotiated with them. Most of the men from the houses had left for work, a number of children and a couple of old people were around. There was no prior notice issued to these people, if there were illegal migrants how have they managed to live here for so many years. People have lived here for almost 30 years, some young men are born here and have not even seen Bangladesh. There are ration cards, voting cards and other documents that many people had, now they all lie under the debris. For 2 days the people were without food, most of them had run out of money to even buy water. Asma had given birth to her baby just 12 days back, she had no place to go with her mother, her husband and father both are in jail, again detained by the police for being Bangladeshi.

Several such men, women and children are lying in the Special Operation Group cell for several months. Their families are now dealing with homelessness. Muzida is in tears as her ailing husband who is suffering from asthma and is almost immobile cannot be moved to a safer base, he is lying in the ruins of his house without a proper shelter, Muzida has burnt bundles of clothes to keep the mosquitoes at bay. Most people who lived there, grew some vegetables and sold them for their livelihood, the demolition has also ruined their livelihood.

Asmal-ul aged 7, Celina 8, Farzan 6 and Rahul 4, have been roaming around the area, searching for their house, they don't know which one it is. Their parents are both detained in the jail for the past 4 months, they are taken care by their grand mother Mariam who is a domestic help, she sets out early in the morning for work and these children have no one to look after them, they don't even get 2 square meal. These children don't know what is going on, they don't know what to grieve, their lost home or their parents. People who had alternative housing options moved away, those who did not have are still under the sun trying to look for housing facility, the water pipeline has been broken so there is no water. People had not eaten for 2 days, it was only on the 5th that Action Aid provided with some very basic food. There was no immediate help provided to the people.

The police for long has used this area to extract money from the poor people living here. The police raids these areas regularly and picks up people randomly and send them to SOG, many a times there are no records of their arrests, the families of these people sell whatever they have to bribe the police and get their loved ones out. This has been possible because of the nexus between the police and the local goons. The local goons, help the police arrest people from these areas and

then act as mediators between the police and the victim which earns both the police and the local goon money.

Women had spoken about the harassments from these local goons, young girls and women live in fear of these goons, so much so that many have succumbed to their atrocities. There are several intertwined issues that this area is grappling with, there is hardly a way out.

India has already been divided itself amongst communities, this is yet another division dividing Indian from refugees.

*An affidavit was filed on 25-11-09 highlighting the action of the police demolishing houses constructed for riot*

*victims who were already displaced.*

*The State government filed affidavits claiming that most of the residents of Siyasat Nagar were Bangladeshis. The Ahmedabad Collector called for the verification of the identities of the person, in the whole process the police constantly tried to threaten the residents and even during the evaluation process members of the civil society who accompanied the victims were also questioned endlessly. Finally after the verification almost 45 people were given entitlements.*

*Finally the Court had directed to the State Government to provide houses and Rs. 5000/ to 45 households whose verification was done by Ahmedabad District Collector.*

## 5. The Fight Still Continues

The Gujarat High Court disposed off this matter in September 2011. The disbursements were done for the various categories, like loss of life, injury damage to residential property and damage to commercial property. It was a uphill task to monitor the state government bureaucracy that created several hurdles for the people who went to receive their cheques. Final Judgment Annexure-3.

Some of the hurdles were-

1. Wrong names on the cheques
2. Not releasing the cheques on time
3. Taking time in doing the correction
4. Not entertaining applications.

These hurdles were constantly brought to the notice of the High Court and time and again directions were issued to the government.

After the case was disposed off, there still remains a section of the affected people who still have not received a single amount for their losses. Therefore it became very important to continue the fight for people who had not received their due. CSJ did not stop just at the high

court it has marched towards the Supreme Court.

### **Grounds for Approaching the Supreme Court**

#### **Grounds**

1. The 2002 communal violence in State of Gujarat, there were many people who died, lost their family members but the Governments sought to be restrictive in their rehabilitation processes only to such persons as were registered in state government records. It is submitted that such restrictive interpretations, do not bring succor to those who are totally affected to the extent of losing all their records and papers.
2. Many uninsured residential / commercial properties were destroyed for which many of the affected had not received any compensation from the Governments.
3. It is the duty of both State Government and the Central

Government to rehabilitate the 2002 victims but that the Governments chose only to deliver relief to only selected groups of riot affected citizens and not to all those affected.

4. High Courts have wide jurisdiction under Article 226 of Constitution of India to judicially review even policy decision of the Governments, if such decision are totally irrational or arbitrary. In the present case, decisions taken by the Central Government are not being implemented by the State Government, which is deliberately dragging its feet due to political considerations.
5. The additional relief and rehabilitation of compassionate appointment to the children/family members of those who died in the 2002 riot granted by Government of India vide its letter dated 14.5.2007 to the State of Gujarat was not fully implemented till the disposal of the writ petition. The High Court ought to have directed the both the Government of India and State Government of Gujarat to implement the said sanctioned schemes in the UOI letter dated 14.5.2007.
6. The State of Gujarat had not disbursed the compensation amounts among the all the eligible victims in full measure. It is submitted that still there are many people who had not been identified, or who have not received any amount from the State by way of compensation.
7. The compensation amounts sanctioned by the respondents were grossly insufficient and the same needed to be enhanced.
8. Additional relief sanctioned by the respondent no. 4 has not included the several rape victims who were also affected during the period of communal violence in 2002.
9. The niggardly distributed compensation compared to the victims of earthquake
10. Failure of the government to submit audit reports of the disbursed amount. Major discrepancies in the disbursements were presented to the High Court but very little heed was paid to the same.
11. The focus on Rehabilitation:  
Principle 28 of the UN Guiding Principle
  1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to



return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

As stated in this principle, the victim of such tragedies do have the right to return to the place he has been displaced from.. there are 86 relief colonies that have been built by non profits and by

individuals. The government in a way has not taken any interest in rehabilitation. Plus persons who have not been residing in these colonies but have not been able to return to their homes because of the still prevailing fear in the villages and areas that they live are not accounted for. The UN guiding principles also lay heavy insistence on security of a internally displaced person, if the persons are unable to return to their houses it becomes the responsibility of the state to take care of it.

The Ahmedabad colony, SIyasat Nagar that was broken down only goes on to reiterate the fact that people displaced were still being deprived of their basic rights. The Government illegally demolished the houses calling them a menace.

## 5. Discrepancies Details

### Compensation Disbursement

Type of loss	Total No of cases	No of cases amount has been disbursed	Cases pending As on 5/8/2011	Total amount released by the central government	Total Amount Unpaid pg	Reasons given by the Government of Gujarat
Death	1169	1166	3	40.91	10.50	Legal heir not available, Address not available, minor beneficiaries amount kept for joint A/AC
Injury	2548	2526	22	29.64	25.53	20 persons Address not available, 1 person remarried, 1 duplicate claim
Residential Damages	29467	29400	67	262.44 cr	126.83	7 legal heir, 47 address not available, 1 Due to FIR, 2 duplicate claim, 10 court stay.
Uninsured commercial losses	19373	19299	72	85.75 crore	25.12	5 legal heir, 54 address not available, 1 FIR, 4 difference in original name, 1 re marriage, 6 no affidavit filed
Total	52557	52393	164	474.85 cr	87.09	

The total number of cases in case of uninsured commercial property is shown as 19337 out of which 19299 have received the compensation which would then result in 38 persons who have not received compensation.

### **Utilization Certificate for Housing Assistance**

The utilization dated 10th nov 2009 submitted to the GOI states that the grant has been disbursed to 29322 cases out of 29467 cases identified by the Government of Gujarat. The amount disbursed to these 29322 cases amounts to Rs 261.14 cr out of the granted 262.44 cr, and the pending amount remains Rs 1.27 cr. Looking at the order dated 17/3/11 according to the submissions 360 cases were still pending to be paid. A disparity seen in the utilization submitted in 2009 and submission made in March 2011.

Further the utilization certificate sent to the GOI dated 4/8/2011 for housing assistance, in 29339 cases out of the total 29467 cases compensation was disbursed the total disbursement amounted to Rs 261.15 cr, the utilization certificate shows that 68 cases remain pending, where as the calculation amounts to 128 cases that remain pending and the amount that remains pending as per the utilization.

The Government of Gujarat raised a demand for a further grant of 10.72cr for 1381 additional cases for housing compensation. The said grant has been released as per the GOI letter dated 3/6/11 and which will be disbursed within the month of Aug-Sept as per the Resolution passed by the Government of Gujarat passed on 6/8/2011. Under what pretext has this list of 1381 appeared? Where as total assistance for Housing in 2002 was provided in 29241 cases, and the ex gratia amount was released for 29467 cases.

# Annexure-1

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
DISTRICT: AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 14664 OF 2008

In the matter of a petition under Articles 14 and 21 of the  
Constitution of India;

AND

In the matter of a petition under Article 226 of the  
Constitution of India;

AND

In the matter of a Public Interest Litigation;

AND

In the matter of Non-implementation of Sanction for Relief  
and Rehabilitation of Victims of Communal Riots in Gujarat  
of 2002 as per the decision dated 11/9/2007 of the  
Government of India, Ministry of Home Affairs and  
Resolution of the Government of Gujarat dated 24/9/2007 of  
the Revenue Department, Sachivalaya, Gandhinagar;

AND

In the matter of not taking any action in respect of the decisions taken by the Union Cabinet towards grant of relief package to the victims of the riots in the year 2002, in Gujarat in pursuance of the intimation sent to the respondent no.1 by letters dated 27.04.2007, 14.05.2007 and 29.05.2007 at Annexures D, F and G;

AND

In the matter between;

1. Mr. Gagan S. Sethi  
Member, Special Monitoring Group  
Appointed by the  
National Human Rights Commission, New Delhi  
Having office at  
C/105, Royal Chinmay  
Off Judges Bungalows' Road  
Bodakdev  
Ahmedabad-380 054.
2. Antarik Visthapit Hakk-Rakshak Samiti  
Through its Convener  
Mr. Yusuf Shaikh  
Having office at  
1, Punit Park, Behind Mariam Park,  
Tandalja, Vadodara ..Petitioners

Versus

- 1 The State of Gujarat  
Notice to be served through  
Its Chief Secretary  
Having office at:  
New Sachivalaya, Gandhinagar.

2 Additional Chief Secretary to the  
Government of Gujarat,  
Revenue Department,  
Having office at  
New Sachivalaya, Gandhinagar.

3 Additional Chief Secretary to the  
Government of Gujarat,  
Home Department,  
Having office at  
New Sachivalaya, Gandhinagar.

4 The Union of India,  
Notice to be served through  
Its Secretary,  
Home Department,  
North Block, New Delhi.

..Respondents

To  
The Hon'ble Chief Justice and His  
Companion Judges of the Hon'ble  
High Court of Gujarat at Ahmedabad.

The petitioner abovenamed:-  
MOST RESPECTFULLY SHEWETH THAT

1. The present petition under Article 226 of the Constitution of India is filed as a Public Interest Litigation by the petitioners, of which petitioner no.1 is a Member of the Special Monitoring Committee set up by the National Human Rights Commission, New Delhi. Annexed hereto and marked as Annexure A is a copy of the Order appointing the petitioner no.1 as a Member of the Special Monitoring Group for Gujarat by the National Human Rights Commission, New Delhi. The petitioner no.1 also heads a Non-Governmental Organisation – Centre for Social Justice in Ahmedabad, which is actively involved in providing para-legal assistance, promoting legal awareness and which deals extensively with the issues

concerning safeguarding the human rights in the State of Gujarat at large. The petitioner no.2 is a Non-Governmental Organisation and has been working for the benefits and betterment of the victims who have been displaced and affected by the unfortunate riots in Gujarat in the year 2002. The petitioners have conducted extensive and detailed studies and collected data of the riot victims. The present petition has been filed with an intention to achieve justice for the victims of the Gujarat Riots 2002 and with a view to ensure that the relief packages announced by the Government of India in March 2007 are made available to the victims who are in the State of Gujarat. The present petition is filed as a Pro-bono-publico litigation and the petitioners are working towards attaining social justice for the vulnerable and marginalized sections of the society and have therefore, a locus-standi to file the present petition.

2. The respondents are discharging public duties by virtue of their holding public offices and are “State” within the meaning of Article 12 of the Constitution of India and are therefore, amenable to the prerogative writ jurisdiction of this Honourable Court under Article 226 of the Constitution of India.
3. In this Public Interest litigation, filed under Article 226 of the Constitution of India, the petitioners challenge the unreasonable and irrational inaction of the respondents in –
  - (a) Not implementing the decisions according sanction for the Relief and Rehabilitation of Victims of the Communal Riots in Gujarat of 2002, as per-
    - (i) Decision taken by the Government of India on 11/9/2007, Ministry of Home Affairs at Annexure B;
    - (ii) Resolution of the Government of Gujarat dated 24/9/2007 of the Revenue Department, Sachivalaya, Gandhinagar at Annexure C;
    - (iii) 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;
    - (iv) 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;

- (v) Letter dated 29.05.2007 by Director, Ministry of Home Affairs, Government of India, addressed to the Chief Secretary, Government of Gujarat, informing him that the Government of India have sent five communications, as indicated in the said letter to the State Government of Gujarat, for implementing the Union Cabinet's decision on relief package announced in March 2007 at Annexure G.
- (vi) Available list of affected persons/families/properties at Annexure E.

The aforesaid action of the respondents in not taking steps to implement till date the aforesaid policy/decisions is 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 facts, in so far as they are relevant for the purposes of the present writ petition, are as under:-
  - 4.1 The petitioners say that it has been extensively reported that the State of Gujarat had seen one of the most unfortunate and devastating events in form of Riots in the year 2002, wherein nearly 1169 peoples lost their lives and around 2548 persons had been seriously injured, in the pre and post Godhra incidents and properties worth crores of rupees had been destroyed and/or badly damaged. The unfortunate incident led to thousands of citizens losing their residential, commercial and industrial properties making them homeless and which deprived them of their livelihood.
  - 4.2 The petitioners say that pursuant to the happening of such an unfortunate incident, the Government of India as well as the Government of Gujarat have time and again announced various policy decisions through, resolutions and other correspondence by introducing Rehabilitation and Relief Schemes in order to provide reparation to the riots victims and affected persons.
  - 4.3 The petitioners say that the petitioners are not seeking implementation of the initial policy framed and introduced in the year 2002, immediately after the riots,



but are seeking implementation of the subsequent policy decisions of the Government of India dated 11/9/2007, taken in pursuance of the earlier policy and seek implementation of the consequential Resolution issued by the Government of Gujarat on 24/9/2007 and which have not been implemented by the respondents. The petitioners challenge the inaction of the respondents in taking appropriate action to grant benefits to the families of the dead and the injured persons as laid down in the policy. Annexed hereto and marked as ANNEXURE-B and ANNEXURE-C, respectively, is a copy of the decision of the Government of India, dated 11.09.2007 and a copy of the Resolution issued by the Government of Gujarat, dated 24/9/2007 in respect of grant of certain benefits to the riot victims.

- 4.4. The petitioners submit that there would be no reason for the respondents to not grant the relief package to the persons, when decisions have been specifically and categorically taken by the Government of India to implement the same for granting the benefits thereof to the riot victims and their families. The said non-implementation is all the more gross when the respondent nos. 1, 2 and 3 after being made aware by a series of letters, do not act upon the same. The petitioners say that the respondents are already aware of the riot victims and the extent to which the benefits of the relief packages that have been announced and made known to them and which need to be extended to the affected persons. The petitioners therefore, say that there would be no reason, germane or otherwise, which would require non-implementation of decisions taken for grant of benefits under the relief and rehabilitation packages to the victims of communal riots of 2002 in Gujarat. The petitioners say that it would be in the public interest to direct the respondents to forthwith release the delayed and pending benefits to those entitled, as they have already suffered the agony and loss in the unfortunate incident of the year 2002.
- 4.5. The petitioners say that the Director in the Ministry of Home Affairs, Government of India, addressed a letter dated 20/27.4.2007 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, and gave details of the package in the said letter. Paragraph 2 of the said letter indicates that 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 properties would be borne by the Central Government. Annexed hereto and marked as ANNEXURE-D is the copy of the letter dated 20/27.4.2007.

- 4.6. The petitioners respectfully submit that the petitioner no.2 has prepared a list identifying the persons/families who have not been granted compensation for injury, and as required under the letter of the Home Secretary, Government of India at Annexure-D, as per Annexure-B and Annexure-C. Annexed hereto and marked, as ANNEXURE-E is the copy of the List identifying the persons/families who have not been granted compensation. The petitioners say that the aforesaid list is only illustrative and by no means exhaustive. The petitioners say that the respondents are already aware as to how many persons/families are entitled to the benefits of the relief package as they have already conducted a survey in that behalf.
- 4.7. The petitioners say that by another letter dated 14.5.2007, the respondent no.1 has been informed by the Director in the Ministry of Home Affairs, Government of India, in respect of additional Relief and Rehabilitation of victims of communal riots in Gujarat that the Central Government has approved the following:
- 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 relaxations.
  - b) The Central Government/ State Government s may launch as 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 super-annuation may be given necessary pensionary benefits by relaxing the normal rules to the extent possible.”

The petitioners say that paragraph 2 of the aforesaid letter requested that necessary steps may be taken by the respondent no.1 for implementing the aforesaid decisions.

Annexed hereto and marked as ANNEXURE-F is the copy of the letter dated 14.5.2007.

- 4.8. The petitioners say that the Director, Ministry of Home Affairs, Government of India has addressed a letter dated 29.05.2007 to the Respondent no. 1 informing him that the Government of India have sent five communications, as indicated in the said letters to the State Government of Gujarat for implementing the Union Cabinet's decision on relief package announced in March 2007 for victims of communal violence that occurred in the State of Gujarat in the year 2002. Annexed hereto and marked as ANNEXURE-G is the copy of the letter dated 29.05.2007.
- 4.9. The petitioners say that despite the clear and categorical decisions intimated to the respondent no.1 granting relief package announced and for implementing the said decisions, as indicated in Annexures B, C, D, F and G above, the respondent nos.1, 2 and 3 have not implemented the same and the consequence of the said inaction has been that the victims of communal violence have again become victims of Government inaction.
- 4.10. The petitioner craves leave of this Hon'ble Court to refer to and rely upon the following Judgments of the Hon'ble Supreme Court of India in the cases pertaining to the riot victims and on Right to Life under Article 21 of the Constitution of India, reported in :-
- (i) Consumer Education and Research Center and others Vs. Union of India and others, reported in (1995) 3 SCC 42 (relevant paragraphs 18, 19 & 22).
  - (ii) National Human Rights Commission Vs. State of Gujarat and others reported in (2004) 8 SCC 610.
5. The petitioner says that the aforesaid inaction of the respondents is contrary to the decisions and policies of the Central Government as well as the State Government and the same is 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 is also violative of Articles 14 and 21 of the Constitution of India, and the respondents are required to be

directed to forthwith release and grant the benefits of the relief package to the riot victims entitled to the same.

6. The petitioners say that the petitioners have got an extraordinary and a sound prima facie case. The petitioners say that the balance of convenience is in favour of the petitioners and against the respondents, and the interim relief, as prayed for by the petitioners in this petition, if not granted, would cause grave and irreparable loss and injury to the petitioners, which cannot be compensated in terms of money. It would, therefore, be in the interest of justice and in the fitness of things that interim relief as prayed for by the petitioners, is granted. The petitioners submit that on the other hand no prejudice or injury would be caused to the respondents if the petitioners are granted interim relief, because the same is in accordance with the well settled principles of law and in consonance with the Government Policies and under Article 21 of the Constitution of India and the respondents are duty bound to implement the same as they are binding on all concerned authorities.
7. The petitioners have not filed any other petition, either in this Honourable Court or in the Honourable Supreme Court of India or in any other Court in respect of the subject matter of this petition.
8. The petitioners do not have any other alternative efficacious remedy available at law except by way of this petition under Article 226 of the Constitution of India and the reliefs prayed for in the petition, if granted, would be complete.
9. The petitioners crave leave of this Hon'ble Court to add to, amend, alter or delete any of the paragraphs in this petition in the event of necessity. The petitioners also crave leave of this Hon'ble Court to produce in this Public Interest Litigation, additional material to substantiate the cause for which this petition is filed under Article 226 of the Constitution of India.
10. In the premises aforesaid, the petitioners most respectfully pray, that this Honourable Court be pleased to issue a writ of mandamus, or a writ in the nature of mandamus, and/or, any other appropriate writ, direction or order, directing the respondents, their officers, servants, agents, etc., to -

- (A) Implement the decision according sanction for the Relief and Rehabilitation of Victims of the Communal Riots in Gujarat of 2002, as per -
- (i) Decision taken by the Government of India on 11/9/2007, Ministry of Home Affairs, at Annexure B;
  - (ii) Resolution of the Government of Gujarat dated 24/9/2007 of the Revenue Department, Sachivalaya, Gandhinagar, at Annexure C;
  - (iii) 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 E;
  - (iv) 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;
  - (v) Letter dated 29.05.2007 by Director, Ministry of Home Affairs, Government of India, addressed to the Chief Secretary, Government of Gujarat, informing him that the Government of India have sent five communications, as indicated in the said letter to the State Government of Gujarat, for implementing the Union Cabinet's decision on relief package announced in March 2007, at Annexure G;
  - (vi) Available list of affected persons/families/properties, at Annexure E;
- (B) Pending the admission, hearing and final disposal of this petition, Your Lordships may be pleased to direct the respondents their officers, servants, agents, etc., to—
- (i) Forthwith disburse the amounts due and payable as per Annexures B, C, D, F and G, to the riot victims / families of the riot victims, as prayed for in Clause (A) (i to vi) above;
  - (ii) File a Compliance Report of the action taken under Prayer (B) (i) above, within such time as may be found appropriate by this Honourable Court;
- (C) An ex-parte ad-interim relief in terms of Prayer (B) (i) and (ii) above may kindly be granted;

(D) Pass such other and further order/s as may be deemed just and proper in the facts and circumstances of the present case;

(E) Award exemplary costs of this petition.

AND FOR THIS ACT OF KINDNESS AND JUSTICE, THE PETITIONERS SHALL AS IN DUTY BOUND, SHALL FOREVER PRAY.

Place: Ahmedabad

Date: 13.12.2008

Shivani S. Rajpurohit  
Advocate for the Petitioners

**Affidavit**

I, Gagan Sethi, petitioner no.1 herein, Adult, Hindu, Indian Inhabitant, do hereby on solemn affirmation that what is stated in paragraphs 1 to 4 are statements of facts which are true to my information and belief and paragraphs 5 to 9 are legal submissions made on legal advice and I believe the same to be true. Paragraph 10 contains prayers. I say that the Annexures to the petition are true copies of the original of which they purport to be. I undertake to supply typed copies of the Annexures to the petition in the event of the same being required by this Honourable Court.

Solemnly affirmed at Ahmedabad on this 13th day of December, 2008.

(Deponent)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
DISTRICT: AHMEDABAD

SPECIAL CIVIL APPLICATION NO. OF 2008

Mr. Gagan S. Sethi & another .... Petitioners

Versus

State of Gujarat & Others .... Respondents

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Sr. No.	Annexures	Particulars	Pg.No.
1.	--	Synopsis	
2.	--	Memo of Petition	
3.	A	Copy of the Order appointing the petitioner no.1 as a Member of the Special Monitoring Group for Gujarat by the National Human Rights Commission, New Delhi.	
4.	B	Copy of the Decision taken by the Government of India on 11/9/2007, Ministry of Home Affairs	
5.	C	Copy of the Resolution of the Government of Gujarat dated 24/9/2007 of the Revenue Department, Sachivalaya, Gandhinagar	
6.	D	Copy of the letter dated 20/27.04.2007	

Sr. No.	Annexures	Particulars	Pg.No.
7.	E	Copy of the List identifying the persons/families who have not been granted compensation	
8.	F	Copy of the letter dated 14.05.2007.	
9.	G	Copy of the letter dated 29.05.2007	

Place: Ahmedabad  
Date : 13/12/2008

SHIVANI S. RAJPUROHIT  
ADVOCATE FOR THE PETITIONER



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
DISTRICT: AHMEDABAD

SPECIAL CIVIL APPLICATION NO.                      OF 2008

Mr. Gagan S. Sethi & another                      .... Petitioners

Versus

State of Gujarat & Others                                      .... Respondents

SYNOPSIS

By way of this Public Interest litigation, filed under Article 226 of the Constitution of India, the petitioners challenge the unreasonable and irrational inaction of the respondents in –

- (a) Not implementing the decisions according sanction for the Relief and Rehabilitation of Victims of the Communal Riots in Gujarat of 2002, as per-
  - (i) Decision taken by the Government of India on 11/9/2007, Ministry of Home Affairs at Annexure B;
  - (ii) Resolution of the Government of Gujarat dated 24/9/2007 of the Revenue Department, Sachivalaya, Gandhinagar at Annexure C;
  - (iii) 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;
  - (iv) 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;

- (v) Letter dated 29.05.2007 by Director, Ministry of Home Affairs, Government of India, addressed to the Chief Secretary, Government of Gujarat, informing him that the Government of India have sent five communications, as indicated in the said letter to the State Government of Gujarat, for implementing the Union Cabinet's decision on relief package announced in March 2007 at Annexure G;
- (vi) Available list of affected persons/families/properties at Annexure E.

Hence, this public interest litigation.

# Annexure-2

SCA/14664/2008 5/5 ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14664 of 2008

With

SPECIAL CIVIL APPLICATION No. 3217 of 2003

With

LETTERS PATENT APPEAL No. 502 of 2010

In

SPECIAL CIVIL APPLICATION No. 13105 of 2009

=====

GAGAN S SETHI, MEMBER, SPECIAL MONITORING GROUP & 1  
- Petitioner(s)

Versus

STATE OF GUJARAT & 5 - Respondent(s)

=====  
Appearance :

MR AMIT M.PANCHAL with MS SHIVANI RAJPUROHIT for Petitioner : 1 - 2.

MR PK JANI, GOVERNMENT PLEADER for Respondent(s) : 1,

None for Respondent(s) : 2 - 3.

MR PS CHAMPANERI for Respondent(s) : 4,

MR ANSHIN H DESAI for Respondent(s) : 4,

NOTICE SERVED BY DS for Respondent(s) : 5 - 6.

MRS VD NANAVATI for Respondent(s) : 5,  
=====

CORAM : HONOURABLE THE CHIEF JUSTICE MR. S.J.  
MUKHOPADHAYA

and

HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date : 17/03/2011

COMMON ORAL ORDER

(Per : HONOURABLE THE CHIEF JUSTICE MR. S.J.MUKHOPADHAYA)

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.	<b>Death Cases</b> - Payment made at the rate of Rs.5 lakhs per deceased.  - Persons who could not be identified.  - Total amount paid.	<b>Total 1169</b> 1163 cases  6 cases  Rs.58.44 crores
2.	<b>Injury Cases</b> - 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	<b>Payment towards damage of residence</b> - 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.	<b>Payments made towards uninsured commercial, industrial property damages.</b>  - Number of cases.  - Amount paid.  - Unpaid cases.  - Unpaid amount.	  19,373 cases  Rs.83.68 crores  355 cases  Rs.2 crores
5.	<b>Total amount paid.</b>  - Death cases.  - Injury cases.  - Cases of damaged houses.  - Maintenance of livelihood and miscellaneous sources.  <b>GRAND TOTAL :</b> Rs. 463.10 crores already paid.	  Rs.58.44 crores  Rs.31.84 crores  Rs.289.10 crores  Rs.83.68

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.

(S.J.Mukhopadhaya, CJ.)

(J.B.Pardiwala, J.)

# Annexure-3

SCA/14664/2008 32/32 JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14664 of 2008

With

CIVIL APPLICATION No. 13968 of 2010  
In SPECIAL CIVIL APPLICATION No. 14664 of 2008

With

LETTERS PATENT APPEAL No. 502 of 2010  
In SPECIAL CIVIL APPLICATION No. 13105 of 2009

With

SPECIAL CIVIL APPLICATION No. 3605 of 2011

With

SPECIAL CIVIL APPLICATION No. 389 of 2011

With

SPECIAL CIVIL APPLICATION No. 3217 of 2003



**For Approval and Signature:**

**HONOURABLE THE CHIEF JUSTICE MR. S.J. MUKHOPADHAYA  
HONOURABLE MR.JUSTICE J.B.PARDIWALA**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?
- =====

**CORAM : HONOURABLE THE CHIEF JUSTICE MR. S.J.  
MUKHOPADHAYA**

**and**

**HONOURABLE MR.JUSTICE J.B.PARDIWALA**

**Date : 7/09/2011**

**CAV JUDGMENT**

**(Per : HONOURABLE MR. JUSTICE J.B. PARDIWALA)**

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 Vs. 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 –

- a. Not implementing the decisions according sanction for the Relief and Rehabilitation of Victims of the Communal Riots in Gujarat of 2002, as per
  - i. Decision taken by the Government of India on 11/9/2007, Ministry of Home Affairs at Annexure B;
  - ii. Resolution of the Government of Gujarat dated 24/9/2007 of the Revenue Department, Sachivalaya, Gandhinagar at Annexure C;
  - iii. 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;
  - iv. 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;
  - v. 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;
- vi. 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 Vs 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.*

*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 assistance 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-N.I.I dated 13.12.2010, which reads as follows :-

No. 14018/9/2008-N.I.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 Bungalow Road  
Vastrapur, AHMEDABAD – 380 015.

Subject : Special Civil Application NO. 14664 of 2008 between  
Mr. Gagan S. Sethi and Others vs. 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 PKJani, 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 PKJani, 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.	<b>Death Cases</b> - Payment made at the rate of Rs.5 lakhs per deceased.  - Persons who could not be identified.  - Total amount paid.	<b>Total 1169</b> 1163 cases  6 cases  Rs.58.44 crores
2.	<b>Injury Cases</b> - 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	<b>Payment towards damage of residence</b> - 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.	<b>Payments made towards uninsured commercial, industrial property damages.</b>  - Number of cases.  - Amount paid.  - Unpaid cases.  - Unpaid amount.	  19,373 cases  Rs.83.68 crores  355 cases  Rs.2 crores
5.	<b>Total amount paid.</b>  - Death cases.  - Injury cases.  - Cases of damaged houses.  - Maintenance of livelihood and miscellaneous sources.  <b>GRAND TOTAL :</b> Rs. 463.10 crores already paid.	  Rs.58.44 crores  Rs.31.84 crores  Rs.289.10 crores  Rs.83.68  

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 of 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 Vs. 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.

(S.J. Mukhopadhaya, C.J.)

(J.B. Pardiwala, J.)