

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, mala fide, 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 FOR EVER 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

INDEX

Sr. No.	Annexures	Particulars	Page Nos.
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	
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.