



Serial No. 2026:JKLHC-JMU:238

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

OWP No. 999/2018

Reserved on: 02.02.2026

Pronounced on: 09.02.2026

Uploaded on: 09.02.2026

*Whether the operative part or
full judgment is pronounced- **Full Judgment***

1. **Sabza Begum**, Age 72 years
W/O Mohd. Bashir Malik,
R/O Fazal-Abad,
Tehsil Surankote, District Poonch
2. **Zakir Hussain Malik**, Age 47 years
S/O Mohd. Bashir Malik,
R/O Fazal-Abad,
Tehsil Surankote, District Poonch

.....Appellant

Through: Mr. Ajay Sharma, Sr. Advocate with
Mr. Naved Naik,
Mr. Shakoor Ahmed Malik,
Mr. Arjun Bharti, Advocates.

Vs

1. **State (now UT) of Jammu & Kashmir**
Through Commissioner/Secretary, Revenue Department,
Civil Secretariat, Srinagar.
2. Commissioner/Secretary to Government,
General Administration Department,
Civil Secretariat, Srinagar.
3. District Development Commissioner, Poonch
4. Tehsildar Surankote, District Poonch

.....Respondents

Through: Mrs. Monika Kohli, Sr. AAG

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

1. The case, as projected by the petitioners, is that a group of armed militants intruded into their house, at Fazal-Abad, Tehsil Surankote District Poonch on 27.07.2003 and besides beating the petitioner no.1-Sabza Begum, gunned down her 28 years' old daughter Zubeda Begum and set on fire their residential house, as the petitioner no.1 was working as SPO in the SOG Wing of Police; that a case was registered vide FIR No.127/2003 for the commission of offences punishable under



Sections 302/307/120-B/122/436 RPC and 7/25/26/27 Arms Act with Police Station Surankote. The petitioners-mother and brother of the deceased were paid an amount of Rs.1,00,000/- as ex gratia by the respondents.

2. It has been pleaded that aggrieved of the inaction of the respondents to pay Rs.4.00 lakhs as balance of ex-gratia, the petitioners filed writ petition (OWP No.816/2011), which was disposed of by this Court on 13.05.2016 with the direction to respondent-District Development Commissioner, Poonch to consider the claim of the petitioners. The operative part of the order dated 13.05.2016 is reproduced below:

“Accordingly, this petition at request is disposed of at this stage with a direction to respondent No.2-District Development Commissioner, Poonch to consider the claim of the petitioners for grant of balance amount of Rs.4 Lac (Rs. Four Lacs only) as ex gratia relief as projected in the writ petition, of course, under rules and pass consideration order thereon within a period of six weeks from the date certified copy of this order and complete set of paper book are made available to respondent no.2 by the petitioners.

Disposed of as above along with connected MPs.”

3. The respondent-District Development Commissioner, Poonch vide Order No.DCP/Rel/809-11 dated 28.02.2017 rejected the case of the petitioners allegedly in a mechanical and arbitrary manner and aggrieved of the impugned order supra, the petitioners have filed this instant petition, inter alia, praying for the following reliefs:

“a. Writ of certiorari quashing the order being no.DCP/Rel/809-11 dated 28.02.2018 passed by respondent no.3, whereby the claim of the petitioners has been illegally, arbitrarily and capriciously rejected.

b. Writ of Mandamus, commanding the respondents to pay the



remaining amount of Rs. 4 lakhs as ex gratia relief to the petitioners being the legal heirs of deceased Zubeda Begum alongwith interest @ 12 % per annum from the date of the death of the deceased.

- c. Writ of Mandamus, commanding the respondents to pay compensation to the petitioners to the tune of Rs. 20 lacs for its failure to provide protection and security to the deceased Zubeda Begum.*
- d. Any other writ or direction deemed fit and proper in the nature and circumstances of the case may also be granted in favour of the petitioners.”*

4. Pursuant to notice, the respondents filed objections asserting therein that the petitioners did not fulfill the eligibility criteria prescribed under SRO 43 of 1994, SRO 199 of 2008 and Government Order No.893/2008 for availing ex gratia compensation to the tune of Rs.4 lakhs; that the petitioner no.1 applied after lapse of more than 13 years from the date of the death of the deceased; that the deceased was not bread-earner and the petitioners were not dependent upon her; that the family was also having excess income in terms of the prescribed limit as per the legal heirs certificate issued by the competent authority; that the case of the petitioners was placed before the District Level Co-ordination cum Screening Committee (DLCCSC) in light of the order passed by this court in OWP No. 816/2011 and the case of the petitioner-Sabza Begum was rejected by the Committee vide office letter dated 28.02.2017 on the aforesaid grounds and finally, it was prayed that the petition being false, frivolous, motivated and misconceived, deserves no consideration and merits dismissal.

5. Learned counsel for the petitioners has vehemently argued that in view of death of the deceased, who happened to be daughter and sister of petitioner no.1 and 2 respectively in a militancy related incident without her involvement in the



militancy; the petitioners were entitled to be paid compensation in terms of the various government notifications and, in particular, the Revised Guidelines of Central Scheme for Assistance to Civilian Victims/Family of Victims of Terrorist/Communal/Left Wing Extremist (LME) Violence and Cross Border Firing and Mine/IED blasts on Indian Territory, 2019, which provided that such a victim was entitled to a compensation of an amount of Rs.3 lakhs in incidents before 24.08.2016 and Rs.5 lakhs for incidents that occurred on or after 24.08.2016 on each death or permanent incapacitation to the affected family.

6. Learned counsel for the petitioners argued that the petitioners were paid only an amount of Rs.1,00,000/- as ex gratia at the time of the death of their daughter for her burial and the respondents, despite directions from this court passed in OWP no. 816/2011, had arbitrarily rejected the claim of the petitioners with regard to payment of the rest of the amount of Rs.4,00,000- mechanically, simply on the ground that claim was not laid by the petitioners within one year from the date of death of deceased as required under SRO 177 dated 20.06.2014, within one year under SRO 199 dated 04.07.2008 or within six months from the date of death of the deceased in terms of SRO 43/1994; he has further argued that the respondents, as a welfare State, was required to make payment of the entire amount of compensation in the form of ex gratia to the victim's family whose young daughter had lost her life in terrorist violence. He has further argued that the daughter of the petitioner no.1 was killed by the militants simply for the reason that the petitioner no.1 was working as SPO with counter insurgent group of Police, resulting into attack on their house, at the relevant time, which was burnt and the petitioner no.1 was beaten, whereas her young daughter was gunned down. He has finally prayed that the petition be allowed and the respondents be directed to make payment in terms of the Revised Guidelines of Central Scheme for Assistance to Civilian



Victims/Family of Victims of Terrorist/Communal/Left Wing Extremist (LME) Violence and Cross Border Firing and Mine/IED blasts on Indian Territory, 2019.

7. Learned Sr. AAG appearing for the respondents, *ex adverso*, argued that the *ex gratia*, which was permissible to the extent of Rs.1,00,000/- at the relevant point of time, had already been paid to the petitioners and that the petitioners have not pointed out in their petition as to under what scheme they have claimed the compensation, which is now being submitted by the learned counsel for the petitioners, that they are entitled under a central scheme. It has neither been pleaded in the petition nor the central government has been arrayed as party to the petition so as to pass such an order by this court as prayed for. Learned Sr. AAG has vehemently argued that the petitioners have failed to apply within the prescribed time in terms of the various notifications on the subject, as such, the respondents have rightly rejected the claim of the petitioners with regard to payment of further compensation of Rs.4.00 lakhs to them and prayed that the petition be dismissed being misconceived.

8. The Apex Court in a case titled **Dwarka Nath v. Income Tax Officer Special Circle D Ward Kanpur & Anr.**, reported as **(1996) AIR SC 81** has held as under:

“Article 226 is couched in comprehensive phraseology and it ex facie confers a wide power on the high court to reach injustice wherever it is found. A wide language in describing the nature "Article 226 is couched in comprehensive phraseology and it ex facie confers a wide power on the high court to reach injustice wherever it is found. A wide language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised was designedly used by the Constitution. The High Court can issue writs in Patna High Court CR. WJC No.68 of 2021 dt.07-04-2021 the nature of prerogative writs as understood in England; but the scope of



those writs also is widened by the use of the expression "nature", which expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. The High Courts are enabled to mould the reliefs to meet the peculiar and complicated requirements of this country. To equate the scope of the power of the High Court under [article 226](#) with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction would defeat the purpose of the article itself. But this does not mean that the High Courts can function arbitrarily under this Article. There are some limitations implicit in the article and others may be evolved to direct the article through defined channels. AIR 1961 SC 1731 and AIR 1954 SC 440. "

9. The Apex Court in a case titled '**Air India Statutory Corporation & Ors. V. United Labour Union & Ors.**', reported as (1997) 9 SCC 377 has also held that the founding fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found.
10. The Apex Court in a case titled **Nilabati Bahera (Smt.) Alias Lalit Bahera V. State of Orissa & Ors**, reported as (1993) 2 SCC 746, held that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection, of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to, the remedy in private law for damages for the tort resulting from the



contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practical mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers.

11. It is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must revive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State.

12. It is an admitted fact that a young girl-Zubeda Begum, daughter of petitioner No.1 and sister of petitioner No.2 had died on 27.07.2003 when their house was attacked by the terrorists as she was gunned down besides beating petitioner No.1 and setting on fire their house at Village Fazad-Abad, Tehsil Surankote, District



Poonch regarding which a case was registered vide FIR No. 127/2003 at P/S Surankote. It is also an admitted fact that respondents had prayed an amount of Rs.1.00 lakh as ex-gratia to the petitioners. This Court on a petition filed by petitioners as OWP No. 816/2011 had directed the respondents to consider the claim of the petitioners for payment of further compensation of Rs.4.00 lakhs as ex-gratia in their favour. However, their plea was rejected by the respondent-Deputy Commissioner, Poonch vide impugned order passed on 28.02.2017 mainly on the plea that the claim was time barred without going into merits of their claim with regard to their entitlement. The respondent-Deputy Commissioner, Poonch has rejected the claim based on the report of the District Screening Committee keeping into view the timelines of the application requiring to be moved and not as to what was the quantum of compensation to be paid as ex-gratia under various notifications issued by the Government of Jammu and Kashmir from time to time. The Deputy Commissioner concerned has not even considered the claim of the petitioners in terms of a centrally sponsored scheme for assistance to the victims of the terrorism. The plea of limitation which has been made the basis for rejection of the claim by the respondent-Deputy Commissioner seems to be an idea just to reject the claim of the petitioners. On such a technical plea, the claim of the petitioners should not have been rejected as it is the duty and obligation of the state functionaries to consider the matter and take steps even at their own level after conducting inquiry to compensate the victims of the terrorism. It is generally not expected from the victims to approach the officers within the prescribed period as they are not out of their trauma to which the terrorists had subjected them. The plea of the respondents as submitted by the learned Sr. AAG with regard to limitation in the considered opinion of this court is not applicable before this court under writ jurisdiction. This court need not go into discussion on the power conferred upon



this court under Article 226 of the Constitution of India to reach out to injustice and make appropriate orders including directions to pay damages or compensation.

13. The Hon'ble High Court of Patna in case of **Amar Nath Poddar V. State of Bihar**, reported as **2021 0 Supreme (Pat) 915** in a death case of a 18 years old boy, who had lost his life due to bullet injuries received while participating in Ma Durga Idol immersion procession had granted an amount of Rs.10.00 lakhs as compensation.

14. This court also in **OWP No. 1979/2017** titled '**Yaar Mohammad Kataria & Anr. V. Union of India & Ors.**', had directed to provide compensation for the death of sons of the petitioners, in an IED blast on 05.07.2009 had held their parents entitled to compensation as per the revised guidelines of Central Schemes for Assistance of Civilian Victims/Family of Victims of Terrorist/Communal/Left Wing Extremist (LME) Violence and Cross Border Firing and Mine/IED blasts on Indian Territory, 2019. The Division Bench of this Court in WP(C) PIL No. 18/2021 titled '**Uri Foundation Lagama Uri V. Union of India & Ors.**' has also asked the authorities to consider and pass necessary orders within two months for the cross-border victims of Uri, in terms of the Central Scheme for victims.

15. This Court had an occasion to go through the Revised Guidelines of Central Scheme For Assistance to Civilian Victims/Family of Victims of Terrorist/Communal/Left Wing Extremist (LME) Violence and Cross Border Firing and Mine/IED blasts on Indian Territory, 2019. Class-6 of the Scheme provides for procedure to be followed at the District Level in such cases for passing the sanction order by the District Magistrate/District Collector on behalf of the State Government, whereas Class-7 provides for the procedure to be followed by the Ministry of Home Affairs (MHA), Government of India for reimbursement of the compensation sanctioned on behalf of the State Government by the DM/DC in



a time framed manner.

16. It will be beneficial to reproduce the Clause 4 of the revised guidelines of the aforementioned scheme relating to eligibility as under:

4. Eligibility

- i. *The financial assistance would be given to the family member(s) in the event of death or permanent incapacitation of the civilian victim, in Terrorist, Communal or LWE Violence and Cross Border Firing and Mine/IED blasts on Indian Territory.*
- ii. *Assistance would be given to the surviving spouse in case of death/ permanent incapacitation of the husband or the wife, as the case may be. However, if both the husband and the wife die in same incident of violence, the family would be entitled to get the assistance, in each case.*
- iii. *Families of the victims would be eligible to get assistance under the Scheme even, if they have received any other assistance, by way of payment of ex-gratia or any other type of relief from the Government or any other source except when a similar scheme is already being implemented by the Central Government.*
- iv. *Civilian victim/ Next of Kin (NoK) will be eligible to get financial assistance under the Central Scheme even if he/she or any other person in the family has been given a permanent Government job on compassionate grounds.*
- v. *Civilian Victim/NoK of the Security Related Expenditure (SRE) Districts/States will be eligible to get financial assistance under SRE Scheme also in addition to the financial assistance under the Central Scheme. In the case of Jammu & Kashmir, financial assistance will be governed by the letter No.16016/4/2017-K-V dated 14th June 2018 issued by Jammu and Kashmir Division (now Jammu, Kashmir & Ladakh Affairs Division), Ministry of Home Affairs.*
- vi. *Next of Kin (NoK) of employees of Central Government, CPSEs, Autonomous Institutions and other Government Organizations including State Governments / State PSEs and similar organizations of State Governments will also be eligible to receive financial assistance of Rs.3 Lakh/Rs.5 Lakh as the case may be, in case of death/ permanent incapacitation (50% and above) on account of incidents of Terrorist/ 2 Communal/ LWE Violence and Cross Border Firing and Mine/IED blasts on Indian Territory.*
- vii. *Foreign Nationals and NRIs shall also be eligible / covered under the Scheme*



w.e.f. 01.04.2008 i.e. the date from which this Scheme has been made effective.

- vii. Those permanently incapacitated, and the members of the family of the civilian victims killed/permanently incapacitated in the Terrorist, Communal or LWE Violence and Cross Border Firing and Mine / IED blasts on Indian Territory would be given a health card by the District Health Society, functioning under the National Rural Health Mission. This card would entitle them to free medical treatment in respect of injuries due to violence and all other major illnesses. Medical care will also be provided to the beneficiaries of the Scheme as a special case under the on-going schemes of the Ministry of Health and Family Welfare, viz., Rashtriya Arogya Nidhi and the National Trauma Care Project.*
- viii. Children in the family would continue to be entitled for assistance admissible under the project 'Assist', implemented by the National Foundation for Communal Harmony (NFCH) of the MHA.*
- ix. No other criteria regarding income of the family would be considered for the eligibility under this scheme.*
- x. The perpetrators of violence or their family will not be entitled to any assistance under the scheme.*
- xi. The eligible claimants can file their claims in prescribed proforma (Annexure-I) within 3 years of the relevant incident of Terrorist, Communal or LWE Violence and Cross Border Firing and Mine/I ED blasts on Indian Territory through the DM/DC/State Government concerned. The time limit, however, can be relaxed in deserving cases by the Central Government on the recommendations of the State Govt. or by the Central Government suo-motu.*

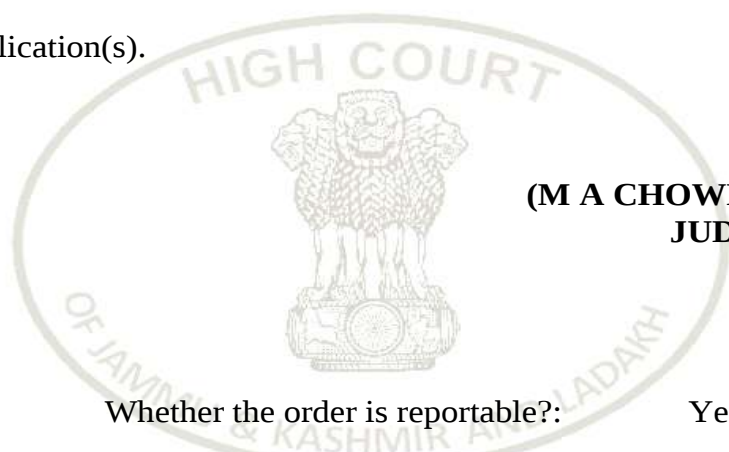
17. Having regard to the aforesaid discussion and having reference to the law as discussed hereinabove, this Court is of the considered opinion that the claim of the petitioners with regard to payment of compensation for the death of the civilian-daughter of the petitioner no.1 and sister of petitioner no.2 in a terrorist activity has been rejected arbitrarily and in a mechanical manner by the respondent-Deputy Commissioner though petitioners, on the basis of admitted facts were entitled to receive financial assistance in terms of sub clause (vii) of Clause 4 of the



aforestated Central Scheme. The impugned order of rejection is, thus, quashed with a direction to consider the case afresh in terms of the Revised Guidelines of Central Scheme for Assistance to Civilian Victims/Family of Victims of Terrorist/Communal/Left Wing Extremist (LME) Violence and Cross Border Firing and Mine/IED blasts on Indian Territory, 2019, expeditiously.

18. The compensation shall be assessed and sanction order shall be passed so that the petitioners who have been craving for the compensation for the last more than 22 years are given some succor for the injuries inflicted on their family by the terrorists way back in the year 2003.

19. The petition is thus disposed of as allowed in the above terms, along with connected application(s).



(M A CHOWDHARY)
JUDGE

Jammu
09.02.2026
Raj Kumar

Whether the order is reportable?:	Yes
Whether the order is speaking?:	Yes