

Office of the Chief Electoral Officer Jammu and Kashmir

"Greater Participation for a Stronger Democracy"

Subject: OWP No. 1659/2018, IA No. 01/2018 titled Shouby Jan and others versus State of J&K and others.

ORDER No. CEO/Elec/2019/ 610

DATED: 08-07-2019

Instant writ petition was filed by the petitioners seeking, inter alia, Mandamus Commanding the respondents to pay compensation to the petitioners for the loss of livelihood due to death of the deceased Muzaffar Ahmad Bhat during election duty.

Hon'ble High court has been pleased to pass an interim order dated 07-09-2018 in the instant petition with a direction, reproduced as under:

"....IA No. 1/2018, is disposed with a direction to the respondents to pay the compensation to the petitioners/applicants, strictly in accordance with the rules and having regard to the annexures, appended to the writ petition."

Accordingly report in the matter was sought to ascertain the facts related to the case and the same was received from Deputy Commissioner Udhampur on 08-05-2019, enclosing therewith report of SSP, Udhampur and Medical Superintendent, District Hospital Udhampur. The relevant extracts of the reports are reproduced as under:

- 1. One person Muzaffar Nazir S/o Nazir Ahmad Bhat R/o Bijbehara Distt. Anantnag, driver of bus No. JK01B-8094 was attached with SSB for election duty at Anantnag and due to postponement of election, the SSB nafri was shifted to SKPA (Sheri-Kashmir Police Academy Udhampur). The said driver fell ill and was shifted to District Hospital Udhampur for treatment and during treatment, deceased breathed his last. To ascertain the cause of death, an inquest proceedings under section 174 CrPC were initiated and during the enquiry, Enquiry officer visited the hospital, prepared site plan, sent viscera of the deceased to FSL for chemical analysis and also recorded the statement of witnesses including drivers whose vehicles were also attached with the said SSB nafri and who were also staying at SKPA Udhampur along with the deceased Muzaffar Nazir. All these witnesses have not expressed any doubt or foul play regarding the death of deceased in their statements recorded during the inquest proceedings. The enquiry officer further stated that FSL reported that no poison was detected in the viscera of the deceased. Further Board of doctors in their final opinion, after post mortem, have mentioned in the autopsy findings, pathological and toxicological report, the most probable cause of death*

could have been severe infective enterocolitis with septicemia paralytic ileus and sudden cardiac arrest and death which is recorded in autopsy register. The enquiry officer in his conclusion has reported that there is no foul play into the death of the deceased and accordingly closed the inquest proceedings as Natural Death.

2. *It has further been reported that the said deceased person had come in the emergency wing in the evening hours of 14-04-2017 in a very sick condition and the doctor on duty (Causality Medical Officer) examined the patient and diagnosed the deceased as a case of severe enterocolitis with septicemia with intestinal Ileus and was prescribed required medication but the patient succumbed to the existing illness.*
3. *Additional Deputy Commissioner at the conclusion of his report has stated in view of the aforesaid reports that any sort of medical negligence and improper inquest proceedings as alleged by next of kin looks devoid of merit.*

The notification for election to fill the seat in House of People for 3-Anantnag Parliamentary Constituency, in the State of Jammu and Kashmir was issued on 17th March, 2017 with date of poll as 12-04-2017. Due to law and order problem, the Commission postponed the poll for the said Constituency to 25-05-2017 vide its Notification dated 10-04-2017, however, Commission while taking note of the fact as to no immediate improvement in law and order situation, rescinded both the notifications viz, 17th March 2017 and 10th April, 2017 by way of an order dated 1st May, 2017.

From the perusal of the aforesaid reports, following inference could be drawn:

- a) That the deceased was a driver of a hired private vehicle, deployed for election related duty during by-election-2017 of 3-Anantnag Parliamentary Constituency.
- b) The deceased died on 14-04-2017, while shifting the SSB nafri to SKPA (Sheri-Kashmir Police Academy Udhampur) from Anantnag.
- c) The deceased died to sudden cardiac arrest, the most probable cause of death could have been severe infective enterocolitis with septicemia paralytic ileus, as recorded in autopsy register.
- d) There was no foul play into the death of the deceased, as alleged by petitioners in the instant petition.

The case of the deceased was perused/examined in terms of various instructions/directions of Election Commission of India with regard to payment of ex-gratia compensation to family of polling personnel who die or sustain injuries while on election duty. The relevant extract of the same are reproduced as under:

(I) Extent of the payment of ex-gratia compensation in case of death:

Under communication No. 218/6/2014/EPS dated 25-04-2014 by Election Commission of India, it has been stated, inter alia,

"...an amount of Rs. 10 lakh as minimum amount to be paid to the next of kin of the official in the unfortunate event of death of the official while on election duty."

(II) Persons entitled to ex-gratia compensation and period during which a person is considered on election duty:

Para 3 (a), (b) and (c) of the above referred communication states as:

3. In this connection, the MHA has also requested the Commission that the compensation amount as per Commission's order dated 25-03-2014 should include all the CAPFs/SAPs and other security force personnel deployed for election duty. The Commission has considered the matter and following clarifications are issued as under:

(a) Payment of ex-gratia compensation to family of polling personnel who die or sustain injuries while on election duty will be applicable to all personnel deployed in all types of election related duties, all security personnel including (CAPFs, SAPs, State Police, Home Guards, etc.), any private persons like drivers, cleaners, etc., hired for deployment for election duty.

(b) the applicable period of election duty would start from the date of the announcement of the elections.

(c) it is clarified that it would be reasonable to consider a person on election duty as soon as he/she leaves his/her residence/office to report for any election related duty including training and until he/she reaches back his/her residence/office after performance of his/her election related duty. If any mishap takes place during this period, it should be treated as having occurred on election duty subject to condition that there should be causal connection between occurrence of death/injury and the election duty.

(III) Requirement of causal connection between occurrence of death/injury and the election duty:

Under Commission's Letter No. 218/6/2006/EPS dated 05-11-2008 and communication of Ministry of Law and Justice (Legislative Department), Government of India, dated 14th August, 2008, it has been stated while making further amplification of the term "election duty" for the purpose of grant of ex-gratia compensation, *it has been clarified by Ministry of Law and Justice that it would be reasonable to consider a person on election duty as soon as he leaves his residence/office to report for any election related duty including training and until he reaches back his residence/office after performance of his election related duty. If any mishap takes place during this period, it should be treated as having occurred on election duty subject to condition that there should be a casual connection between occurrence of death/injury and the election duty.*

(IV) Reasons of death considered for ex-gratia compensation:

Under Commission's letter No. 218/6/2009/ EPS dated 17-02-2009, para 4 to 7 states as under:

"....4. From the past experience, it is seen that even in cases of death of polling personnel on election duty innumerable hurdles in releasing the compensation amount due to them are created by the insurance companies. In many cases, the bereaved family members of the deceased officials have had to approach the Courts seeking relief of payment of the compensation that they genuinely deserved and which should have been released to them forthwith. Litigation would mean that a good part of the amount that they would ultimately get would have been already spent by them on litigation, besides the financial hardships the bereaved families would have suffered due to loss of earning member of the family. In any case, it seems the states will end up spending more money on insurance premium than compensation to the affected families.

5. The Commission has considered this matter in the light of the experience of the working of the Group Insurance Schemes for the polling personnel. Election Duty cannot be equated with the normal work of the polling personnel. Elections involve time-bound assignment, and execution of the work on the field involves element of risk and threat of varying level to the polling personnel. In some cases where the State Governments had entered into MOU with Insurance Companies for payment of compensation to the polling personnel, there have been cases where even in the case of death due to heart attack during performance of election duty, the Insurance Companies have taken the plea that only the death caused due to violent incidents are covered under the insurance scheme for the polling personnel. The nature of election duties being what it is, there are several threat and fear factors inflicted by the unruly party cadres and anti-social elements. Therefore, in the course of performance of election duties, death can occur to the polling personnel even without any seemingly violent incidents.

6. The Commission is, therefore, of the view that the polling personnel and other officials appointed in connection with conduct of elections should be provided the protection of adequate compensation in the event of any mishap. As mentioned above, the system of Group Insurance has not been very successful in spite of the large amounts spent on premium payment to the companies.

7. In view of the above, the Commission desires that the State Government may frame separate guidelines for payment of enhanced amount of ex-gratia payment in the event of any mishap to the election related officials. The Commission recommends an amount of Rs. 5 lacs as the minimum amount to be paid to the next of kin of the official in the unfortunate event of death of the official while on election duty. If the death is unfortunately caused due to any violent acts of extremist or unsocial elements like, road mines, bomb blasts, armed attacks, etc. The amount of compensation should be double, i.e. Rs. 10 lacs. In the case of permanent disability, like loss of limb, eye sight, etc., a minimum ex-gratia payment of Rs. 2.5 lacs should be made (which should be doubled in the case of

such mishaps being caused by extremist or unsocial elements as aforesaid). While framing the guidelines, it may be clearly spelt out that the payment will cover any mishap occurred during the entire period of election duty connected with polling. A person is to be treated on election duty as soon as he leaves his residence/office to report for any election related duty including training and until he reaches back his residence/office after performance of his election related duty. If any mishap takes place during this period, it should be treated as having occurred on election duty subject to condition that there should be a casual connection between occurrence of death/injury and the election duty."

Perusal of the aforesaid instructions issued by Election Commission with regard to grant of ex-gratia compensation, following points important and relevant to the instant petition emerged:

- (a) Election duty commences for a person as soon as he /she leaves his/her residence/office to report for election related duty including training and concludes when the person reaches back his/her residence/office, after performance of his/her election related duty.
- (b) Private persons like **drivers**, cleaners etc., hired for deployment for election duty are covered under ex-gratia compensation.
- (c) There has to be a casual connection between occurrence of death /injury and election duty.
- (d) During the course of performance of election duties, death can occur to the polling personnel even without any seemingly violent incidents.

In the instant case:

- (a) The deceased Sh. Muzaffar Nazir S/o Nazir Ahmad Bhat R/o Bijbehara Distt. Anantnag, driver of bus No. JKO1B-8094 was attached with SSB for election duty at Anantnag during Lok-sabha elections-2017 to 3-Anantnag Parliamentary Constituency.
- (b) During shifting of SSB nafri from Anantnag to SKPA (Sheri-Kashmir Police Academy Udampur), deceased died due to sudden cardiac arrest, while performing election related duty.

It is pertinent to mention that the Commission issues directions/instructions regarding payment of ex-gratia compensation in case of death or injury to persons deployed for election related duties during conduct of every election and consequent upon the same, State Government issues orders pertaining to ex-gratia compensation. The orders pertaining to Lok Sabha elections-2014 have been issued by the General Administration Department, J&K vide Government order No. 475-GAD of 2014 dated 13-05-2014. Based on latest directions in this regard from Election Commission of India, similar orders have been issued by the General Administration Department

for General Electons to Lok-Sabha 2019 also. However, the instant case of the deceased Sh. Muzaffar Nazir S/o Nazir Ahmad Bhat R/o Bijbehara Anantnag pertains to by-elections 2017 for which neither any direction/instruction had been issued by the Commission nor any orders issued by General Administration Department, J&K regarding ex-gratia compensation to various categories of personnel who die or sustain injuries while on duty, during Lok-Sabha by-elections to 3-Anantnag Parliamentary Constituency-2017 in Jammu and Kashmir.

Accordingly, clarification regarding the above referred issue was sought from Election Commission of India. The Commission vide communication No. 464/J&K/2019/NS-I/ dated 5th July, 2019 clarified that Commission's instructions as contained in its letter No. 218/6/2014/EPS dated 25th April, 2014 related to payment of ex-gratia compensation to family of polling personnel who die or sustain injuries while on election duty is applicable for all election held thereafter and upto the revised instruction No. 218/6/2019 dated 10th April, 2019. The Commission has further advised to take necessary action for payment of ex-gratia compensation to the family of polling personnel Sh. Muzaffar Nazir.

Now, therefore, in due deference to interim court order dated 07-09-2018, based on the reports received from concerned quarters and in terms of above referred instructions/advise of Election Commission of India regarding grant of ex-gratia compensation, the case of the deceased Sh. Muzaffar Nazir S/o Nazir Ahmad Bhat R/o Bijbehara Distt. Anantnag (driver of a hired private vehicle bearing No. JKO1B-8094) deployed for election related duty, who died on 14-04-2017 due to sudden cardiac arrest, while performing election related duty during Lok sabha by-elections-2017 to 3-Anantnag Parliamentary constituency, is hereby accorded consideration for entitlement to ex-gratia compensation in terms of ECI communication No. 464/J&K/2019/NS-I/ dated 5th July, 2019 and as per the prescribed slab mentioned under communication No. 218/6/2014/EPS dated 25-04-2014 issued by Election Commission of India, which shall be paid to the next of kin of the deceased, subject to the fulfilment of conditions, as may be required for the said purpose.


Sd/-
Chief Electoral Officer,
Jammu and Kashmir

No. 5402/CED/LS/MISC/2019/399-406
Copy to:

Dated: 08-07-2019

1. Secretary to Government, General Administration Department, Civil Secretariat, Srinagar for information.
2. Deputy Commissioner Udhampur for information.
3. Deputy Commissioner, Anantnag for information.

4. Senior Superintendent of Police, Udhampur for information.
5. Accounts Officer, O/o Chief Electoral Officer, J&K for information and necessary action.
6. SHO Udhampur for information.
7. Sh. Nissar Hussain Shah, Sr. AAG, High Court at Srinagar (Standing Counsel, Election Department) for information. Copy of the writ petition is also enclosed for reference.
8. Smt. Shouby Jan (Petitioner No. 01), W/o Late Muzaffar Ahmad Bhat R/o Khush Roie Kalan, Tehsil Srigufwara, District Anantnag for information.


**Joint Chief Electoral Officer,
Jammu and Kashmir**
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