

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 24.09.2026

Pronounced on: 30.09.2026

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*Whether the operative part
or full judgment is
pronounced: **Full***

WP(C) No.2672/2023

NAZIR AHMAD MIR

...PETITIONER(S)/ APPELLANT(S)

Through: - Mr. Dar Khurshid, Advocate.

Vs.

UNION OF INDIA & ORS.

...RESPONDENT(S)

*Through: - Mr. Faizan Ganai, CGC, vice
Mr. T. M. Shamsi, DSGI-for R1, R5 and R6.
Mr. Ilyas Laway, GA-for R2 to R4*

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1) The petitioner has filed this petition for quashing the order/communication No.Div.Com/Relief(1616)/74 dated 02.08.2022, issued by respondent No. 3 and the subsequent communication dated 31.05.2023, issued by respondent No.4 and the recovery proceedings initiated by respondent No. 6 pursuant to the communications/orders supra, with further direction to the respondents to refund the amount already recovered from the salary of the petitioner, if any,

and restrain the respondents from initiating the recovery from the petitioner.

2) It is stated that in the year 1993, many residential houses of village Shalla Bathu were set ablaze by some unknown militants, because of which, a number of persons went missing including all the family members of the petitioner. The petitioner, only surviving member of the family, was working in Border Security Force and was posted at Jammu when the incident took place. The police investigated the matter and during investigation, it transpired that the father, mother, two brothers and two sisters of the petitioner were killed by the militants in a very inhuman manner. After the petitioner obtained the information, he filed an application with Police Station, Kupwara, which was duly endorsed by Tehsildar, Kupwara, stating therein that the petitioner was serving in the BSF and all members of his family were killed by some unknown militants. The police registered FIR No.15/1993 and the matter was investigated. After receiving the status report along with the copy of FIR and death certificates of six persons, it was revealed that six persons were reportedly killed in militant activity on 15.05.1993. Accordingly, the cases were placed before the District Level Screening-cum-

Coordination Committee for approval of ex-gratia relief to the tune of ₹1.00 lac each in favour of next of kin of six deceased persons, which were approved on 15.09.1997.

3) It is stated that during verification, it was found that village Shalla Bathu was quite near to LOC and the father and brother of the petitioner were working as porters with the security forces and on the onset of militancy in the valley, residents of village Shalla Bathu went across the other side of the border, an area under the control of Pakistan. The petitioner was residing in the village along with his family.

4) It is stated that on 28.03.2022 that the Additional Secretary to the Government, Home Department, Civil Secretariat, J&K, Jammu, i.e. respondent No. 2, issued a communication to respondent No.3 whereby he was directed to take up the matter with Director General, BSF, to initiate the recovery proceedings of the ex-gratia relief from the salary of the petitioner on most urgent basis. On the same day, a letter was issued to respondent No.1 from the office of respondent No.2, whereby he was intimated about the aforesaid communication. On 12.06.2022, one more communication was forwarded from the office of respondent No.2 to respondent No.3 for furnishing the updated status

report regarding the action taken by respondent No.5 for effecting recovery of ex-gratia amount from the petitioner.

5) In terms of communication dated 02.08.2022 issued by respondent No.3, respondent No.4 was directed to liaise with respondent No.5 for effecting recovery of the amount from the salary of the petitioner and if not recovered till date, initiate the process of recovery with immediate effect and if required, to attach the property of the petitioner to ensure the recovery of the amount. Another communication dated 27.08.2022 was issued by respondent No.3 to DIG BSF, HQ Kupwara, whereby he was intimated that the matter was taken up with the BSF authorities from time to time for recovery of amount but till that date no amount was recovered, with the request to recover the amount from the petitioner.

6) It is stated that the BSF authorities had conveyed that the amount was sanctioned by the J&K Government on the basis of inquiry and investigation conducted at their level and handed over directly to the individual concerned without involvement of BSF, but still the respondent No.5 was requested to initiate recovery proceedings against the petitioner.

7) It is contended by the petitioner that from time to time he filed representations with the respondents, but they did not bother to take note of the same which has compelled him to file this petition for quashing the orders/communications supra on the ground that the same have been issued by the respondents without application of mind and in a mechanical manner, particularly when the ex-gratia relief was sanctioned after detailed inquiry and no question of commission of fraud can arise after a gap of more than 25 years. It is also urged that the recovery proceedings have been initiated solely on the ground that the family members of the petitioner are alive and residing in Pak Occupied Kashmir (PoK), but this fact is not supported by any investigating agency of India as they cannot investigate the subject matter in PoK, therefore, the recovery proceedings are illegal. Further, no opportunity of hearing has been afforded to the petitioner before directing the recovery of ₹6.00 lakhs from the petitioner after the lapse of 25 years.

8) The respondent Nos.2 to 4 have filed the response stating therein that before issuing the impugned orders, proper opportunity of hearing was afforded to the petitioner.

It is stated that in the year 1993, six persons reportedly went

missing/died and death certificates were issued by the Police Station concerned after verification. The cases of the deceased were placed before 6th DLSC Screening Committee for sanctioning of ex-gratia relief and vide order dated 15.09.1997, ex-gratia relief of ₹1.00 lakh each was sanctioned in favour of next of kin of six deceased persons of village Shalla Bathu, Kupwara, i.e. the petitioner herein. Thereafter, a news was published in daily newspaper on 03.05.1999 titled 'Government gives away relief package for dead families living in PoK'. The Government of India vide communication dated 17.09.1999, sought a report from Home Department and the Home Department sought a comprehensive report from the Divisional Commissioner, Kashmir. The Divisional Commissioner, Kashmir, vide letter dated 20.11.2006 conveyed to the Financial Commissioner, Home, that ex-gratia relief had been drawn fraudulently by Shri Nazir Ahmad Mir, BSF personnel, on account of reported death of his relatives who had actually migrated to PoK. In fact, all the agencies of the Government including the security agencies were misled. The Deputy Commissioner, Kupwara, was asked to initiate proceedings for recovery of the fraudulently drawn relief amount from the concerned. The police authorities also ordered an enquiry into the matter and Tehsildar, Kupwara, was directed by

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then ADC Kupwara vide communication dated 02.06.2007 to recover the said amount under the provisions of Land Revenue Act. The Deputy Commissioner, Kupwara, vide letter dated 13.02.2008 conveyed to the Divisional Commissioner that the petitioner was working in BSF and accordingly, SSP, Kupwara, was requested to locate the petitioner and the said unit of the BSF. SSP Kupwara vide letter dated 19.03.2008 conveyed to the Divisional Commissioner that the petitioner was posted in 14th Battalion BSF at North Tripura and his regimental number was 89310013. The matter regarding recovery of the amount of ₹6.00 lakhs from the petitioner was taken up with BSF through Commanding Officer 14th Battalion vide letter dated 25.03.2008 and the Commanding Officer conveyed that Constable Nazir Ahmad was posted out from their unit to 141 Battalion BSF on 15.04.2008 and 141 Battalion was deployed at BSF Paloura Camp Jammu. The Deputy Commandant (ADM) Frontier Headquarter, Jammu, vide letter dated April, 2009, forwarded the communication of Assistant Commandant to DIG 141 Battalion BSF, wherein it was conveyed that the amount was sanctioned by the Government on the basis of enquiries/investigation conducted at their level and handed over the amount directly

to the individual concerned without involvement of BSF. The
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matter was again taken up with Commanding Officer, 141 Battalion, BSF, with the request to recover the amount from the petitioner. Further, the Ministry of Home Affairs, Government of India, vide letter dated 18.11.2021, intimated that an amount of ₹6.00 lakhs has been drawn as compensation fraudulently by the petitioner on account of ex-gratia for six members of his family and the Ministry of Home Affairs sought comments from the Home Department, J&K. The matter was again deliberated and after deliberation, the office of Commandant 41 Battalion issued an order dated 07.07.2023 to recover an amount of ₹6.00 lakhs from the petitioner in 30 instalments with effect from August 2023.

2) It is further averred that in-depth enquiry was conducted in the matter by ADC Kupwara and during the enquiry, the petitioner was called in person vide notice dated 02.02.2001 with the directions to appear in person on 06.02.2001. The statements of the petitioner and other witnesses were recorded and it was proved that an amount of ₹6.00 lakhs was sanctioned and disbursed to the petitioner on account of reported death of his relatives who had actually migrated to POK. During inquiry, the petitioner was given an opportunity of hearing by calling him

personally before the enquiry officer, therefore, the contention of the petitioner that he was not provided reasonable opportunity of hearing is bereft of any merit. It is stated that the enquiry report dated 12.03.2001 was submitted to Divisional Commissioner, and Divisional Commissioner, vide communication dated 02.08.2022 requested the Director General Border Security Force to initiate recovery from the salary of the beneficiary and deposit the same with the Ministry of Home Affairs, Government of India. The respondent Nos. 2 to 4 have placed on record the communication dated 09.03.2000 to assert that the six families of Shalla Bathu had crossed to PoK and the relief was fraudulently sanctioned. Further, the police officials and the revenue authorities were found involved in getting the relief cases sanctioned fraudulently.

10) Respondent Nos.5 and 6 have filed their response stating therein that the petitioner was their employee and on 30.09.2022, a letter regarding fraudulent payment of ex-gratia relief in favour of the petitioner was received from Frontier Headquarter BSF Jammu. The petitioner, thereafter forwarded a copy of representation made by him to Additional Deputy Commissioner, Kupwara ,wherein he had requested to revoke the order of recovery after dropping the

false and baseless allegations levelled against him and cautioned that he would approach the court of law.

11) The respondent Nos.5 and 6 have given details of the inter-se communications between BSG and respondent No.2 to 4 regarding the request made by the respondent Nos.2 to 4 for effecting recovery of ₹6.00 lakhs from the petitioner. It is stated that a meeting under the Chairmanship of AS&FA (Home) to discuss the payment of ex-gratia of ₹6.00 lakhs on false grounds was held on 7th of July, 2023. The Record of the Decision of the aforesaid meeting issued by the Ministry of Home Affairs, J&K and Ladakh was received through Adm. Dte. HQ DG BSF vide letter dated 18th July, 2023, wherein 41 Bn. BSF was directed to issue a detailed speaking order with reference to Para No.4(ii) of the Record of Decision of the aforesaid meeting. Accordingly, in compliance to Para 4(ii) of the Record of Decision of the meeting held under the Chairmanship of ASF&FA (Home) on 7th July, 2023, 41 Bn. BSF issued a detailed speaking order to recover ₹6.00 lakhs from the salary of the petitioner in 30 instalments starting from the month of August, 2023, for further depositing it into appropriate account of Union Territory of Jammu and Kashmir. Subsequently, the office of the Deputy Commissioner, Kupwara, was requested to

intimate the details the Government account for remitting the recovered amount from the salary of the petitioner and the Home Department, Govt. of J&K vide letter dated 21st August, 2023, intimated to remit the recovered amount under Major Head 0055-Police, Minor Head 800.

12) Learned counsel for the petitioner has submitted that the amount of ex-gratia relief was granted to the petitioner after the detailed investigation and the respondents cannot level false allegations of fraud upon the petitioner for the purpose of recovering the amount of ₹6.00 lakhs. He has vehemently argued that the death certificates were issued by the respondents themselves and the petitioner cannot be faulted for sanctioning of the amount of ₹6.00 lakhs in his favour by the respondents. Learned counsel has also submitted that the petitioner has already attained superannuation and has one specially-abled child to maintain.

13) Per contra, learned counsel for the respondent Nos. 2-4, has argued that proper enquiry was conducted and it was found that the petitioner had fraudulently obtained ex - gratia amount on account of demise of six members of his family, where as they had crossed over to the other side of Kashmir in the year 1993.

14) Heard and perused the record.

15) The record depicts that a report dated 05.05.1997 was submitted by the Superintendent of Police, Kupwara, to Deputy Commissioner, Kupwara. In the said report, it was mentioned that the matter was got investigated through SHO P/S Kupwara, who stated that one Nazir Ahmed Mir i.e. the petitioner herein, had lodged a written report in Police Station Kupwara, duly endorsed by Tehsildar, Kupwara that he was serving in BSF and in the year 1993, all his family members were killed by the militants, and no person except his sister was alive. The matter was verified and it was found all six members were killed by heavy firing by Pak Army, but no report was lodged in the Police Station for the said incident. The relatives of the petitioner, who was posted at Rajasthan, informed him, wherefrom he came back to Jugtial and approached the District Administration and army authorities. Accordingly, the report No.15 dated 08.03.1997 was entered in the Daily Diary Register of Police Station, Kupwara.

16) One fact that becomes apparent from the aforementioned report is that the alleged incident occurred in May 1993; yet, after a considerable lapse of four years, the report dated 08.03.1997 was entered into the Daily Diary

Register of Police Station Kupwara. Notably, the death certificates were likewise issued later, in September 1997.

17) A specific query was posed by this Court to the learned counsel appearing for the petitioner as to whether the bodies of the deceased family members were handed over to the petitioner. The learned counsel candidly submitted that the bodies were never delivered to him. It strains credulity that the petitioner's family members allegedly passed away in 1993, yet the petitioner remained silent for four long years without making any effort to ascertain their whereabouts.

18) Respondent Nos. 2 to 4 have placed on record a communication dated 9th March 2000, addressed by the Superintendent of Police, Kupwara, to the Deputy Commissioner, Kupwara, detailing the fraudulent sanction of the relief case. The said communication is self-explanatory and indicates that departmental action ought to be initiated against the police officials and revenue authorities concerned for their involvement in procuring the fraudulent sanction.

19) The petitioner's claims present significant contradictions. In his representation i.e. Annexure-X to the writ petition, relying on DDR Entry No. 15 dated 08.03.1997,

he asserts that six family members were killed in a 1990 firing incident. In Paragraph 3(II) of the petition, however, he states that his family went missing in 1993 during militant violence in Village Shalla Bathu near the LoC. Furthermore, while he alleges in Paragraph 3(IV) of the writ petition that FIR No. 15/1993 was registered on his application at Police Station Kupwara, the communication dated 5th May 1997, which formed the basis for sanctioning relief, indicates that only a Daily Diary entry (No. 15) was recorded on 8th March 1997.

20) The petitioner's lack of candor is clear from his repeatedly shifting claims. Intriguingly, while the report dated 05.05.1997, initiated solely on the petitioner's application, states that all family members except one sister were killed, the record fails to explain why compensation was paid exclusively to the petitioner to the exclusion of his surviving sister. This Court is constrained to observe that the petitioner, in connivance with the authorities concerned, managed to fabricate or push through his case for ex-gratia relief long after the alleged occurrence. The petitioner has utterly failed to prove that six of his family members died in 1993. Furthermore, it is improbable that a person whose six

family members perished in 1993 would remain dormant for four long years before seeking redress.

21) The petitioner further contends that he was not afforded an opportunity of hearing prior to the order directing recovery of the ex-gratia amount. However, the respondents in their reply have categorically stated that a notice was issued to the petitioner directing him to appear before the Additional Deputy Commissioner, Kupwara, and that he duly appeared during the inquiry. The statements of the petitioner and other witnesses were recorded, whereupon it was established that the sum of ₹6.00 lakhs was fraudulently sanctioned and disbursed to the petitioner on account of the alleged deaths of his six family members, who had in fact migrated to PoK. The petitioner has not disputed or rebutted either the issuance of notice or the recording of his statement by filing any rejoinder or affidavit. In the absence of any rebuttal to the respondents' positive stand that due opportunity of hearing was granted, it cannot be held that the recovery proceedings were initiated in violation of the principles of natural justice.

22) It appears that verification exercise was triggered following a 1999 news report exposing fraudulent compensation claims for persons alive in PoK. Crucially, in

the present case, not even a single body of the petitioner's alleged deceased family members was ever found. Respondent Nos. 2 to 4 rightly concluded that the sanction of ₹6.00 lakhs was procured in collusion with police and revenue officials. Permitting the petitioner to retain these funds would perpetuate unjust enrichment, as the very basis of the grant has been established as false.

23) It is settled law that fraud vitiates all the proceedings. In this context, it would be appropriate to take note of the judgment of the Hon'ble Supreme Court of India in "**Vishnu Vardhan v. State of U.P.**", 2025 SCC OnLine SC 1501, wherein, it has been observed as under:

1. In *Nidhi Kaim v. State of Madhya Pradesh*¹, a three-Judge Bench of this Court emphatically asserted "... **stated simply, nothing ... nothing ... and nothing, obtained by fraud, can be sustained, as fraud unravels everything.**"

2. At the end of the last century, this Court in *S.P. Chengalvaraya Naidu v. Jagannath*² noticed the growing trend of abuse of the process of law by dishonest litigants playing fraud on courts. Fraud was held to be an act of deliberate deception with the design of securing something by taking unfair advantage of another: a deception in order to gain by another's loss. The opening paragraph of such decision reads as follows:

"Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree — by the first court or by the highest court — has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

This Court then warned that:

5. The principle of “finality of litigation” cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Propertygrabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

3. “Fraud unravels everything” was famously said by Lord Denning in *Lazarus Estates Ltd. v. Beasley*, emphasising that fraud can invalidate judgments, contracts and all transactions. The principle highlights the importance of honesty and transparency in legal proceedings and transactions. However, it is a cardinal principle of law that fraud has to be pleaded and proved. Order VI Rule 4, of the Civil Procedure Code, 1908⁴ may be referred to ordaining that particulars, *inter alia*, of fraud have to be stated in the pleadings.

4. From the multiple decisions of this Court on ‘fraud’, what follows is that fraud and justice cannot dwell together, the legislature never intends to guard fraud, the question of limitation to exercise power does not arise, if fraud is proved, and even finality of litigation cannot be pressed into service to absurd limits when a fraud is unravelled.

(emphasis added)

24) In view of the above, the present petition is found to be bereft of any merit, and the same is accordingly dismissed.

**(Rajnish Oswal)
Judge**

**Srinagar,
30.09.2026**

“Bhat Altaf-Secretary”

Whether the **judgment** is reportable: **YES**