



GAHC010099352019

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2998/2019

ABDUL WAHAB
S/O LT. ASMAT ALI, R/O VILL. KATAHBARI, NEAR NO. 2 MASJID, P.O. AND
P.S.- GORCHUK, DIST.-KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
TRANSPORT DEPTT. DISPUR, GUWAHATI-6

2:THE SECRETARY
TO THE GOVT. OF ASSAM
TRANSPORT DEPTT. DISPUR
GUWAHATI-6

3:THE JOINT SECRETARY
TO THE GOVT. OF ASSAM
TRANSPORT DEPTT. DISPUR
GUWAHATI-6

4:THE DIRECTOR
INLAND WATER TRANSPORT
ASSAM
ULUBARI
GUWAHATI-7

5:THE EXECUTIVE ENGINEER
INLAND WATER TRANSPORT DIVISION
GUWAHATI
ULUBARI
PIN-78100



B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri N. Borah, Advocate.

Advocates for respondents : Ms. M. D. Borah, SC, Transport Department.

Date(s) of hearing : 04.03.2024

Date of judgment : 04.03.2024

JUDGMENT & ORDER

The instant writ petition has been filed being aggrieved by non-consideration of a representation dated 25.03.2019 submitted by the petitioner before the Director, Inland Water Transport Department, Assam seeking compensation under Rule 34 of the ***Control and Management of Ferries Rules, 1968*** (hereinafter the Rules of 1968) for recovery of the loss of revenue allegedly incurred by the petitioner. The prayer made in the writ petition reads as follows:-

“ *Under the facts and circumstances stated herein above it is therefore most respectfully prayed that Your Lordships would be pleased to admit this petition, call for the records of the case and issue Rule calling upon the Respondents to show-cause as to why a writ in the nature of*

A. Mandamus shall not be issued directing the Respondent authorities not to forthwith pay compensation to the petitioner for the financial losses amounting to Rs. 14,06,743/- incurred in view of illegal and arbitrary cancellation of his settlement order dated 08-03-2018, and

B. Mandamus shall not be issued directing the Respondent authorities to immediately consider the representations dated 25-03-2019 (Annexure-11 herein),

-AND-

Pending disposal of the Rule be further pleased to pass appropriate interim order directing the respondent authorities to pay compensation to the petitioner for the financial losses amounting to Rs. 14,06,743/- incurred in view of illegal and arbitrary cancellation of his settlement order dated 08-03-2018."

2. I have heard Shri N. Borah, learned counsel for the petitioner. I have also heard Ms. M. D. Bora, learned Standing Counsel, Transport Department who has also filed affidavit-in-opposition in this case on 02.08.2019.

3. The projected case of the petitioner is that vide an order dated 08.03.2018, the petitioner was offered a settlement order for Guwahati-Kirakara & Guwahati Moumari Ferry Service, consequent upon which an agreement was entered into for the period from 01.04.2018 to 31.03.2019 Accordingly, the petitioner had started operation of the ferry service. However, vide an order dated 03.01.2019, the said service was cancelled. The cancellation order however reflects that the same was done pursuant to a judgment dated 17.09.2018 passed by this Court in WP(C) Nos. 2719/2018 and 3112/2018. The aforesaid order of cancellation was the subject matter of challenge by the petitioner by filing WP(C) No. 355/2019. The aforesaid WP(C) No. 355/2019 was disposed of vide order dated 23.01.2019 giving liberty to the petitioner to approach the Director by filing a representation. Accordingly, on 30.01.2019, representation was submitted followed by another representation on 25.03.2019 wherein a claim for compensation under Rule 34 of the aforesaid Rules has also been made. As according to the petitioner, the said representation was not considered, the instant writ petition has been filed.

4. Shri Bora, the learned counsel for the petitioner has submitted that the cancellation has been done without the requirement of a month's notice to the



petitioner for which he has suffered loss. He has also referred to Rule 34 of the Rules and has therefore submitted that appropriate directions be issued directing the Department to pay compensation to him for the loss suffered. In support of his submission, Shri Bora, learned counsel has also referred to an order of this Court dated 13.11.2019 passed in WP(C) No.7404/2018 (Majibur Rahman Vs State of Assam) wherein a direction for consideration of a representation seeking compensation has been issued.

5. *Per contra*, Ms. M. D. Bora, learned Standing Counsel of the Department has, at the outset submitted that the present subject matter may not even come within the ambit of adjudication by a writ court as there are disputed questions of fact. It is also submitted that the claim is for unliquidated damage which this Court does not have the expertise or mechanism to assess in absence of any evidence or proof to be adduced unlike in a Civil Court. By referring to the affidavit-in-opposition filed on 02.08.2019, Ms. Bora, learned Standing Counsel has further submitted that the *kist* money has been refunded to the petitioner for the period in question. In the said affidavit-in-opposition, reference has also been made to an order dated 30.04.2019 whereby the representation of the petitioner has been disposed of.

6. By referring to the observation of this Court in the judgment dated 17.09.2018 passed in WP(C) No. 3112/2018, it is submitted by the learned Standing Counsel that it is on the basis of the said observation that a scrutiny was done and accordingly the Cancellation Order was passed on 03.01.2019 which consisted 16 numbers of ferry services including the ferry service of the petitioner.

7. The rival contentions have been duly considered.

8. The relief sought for in this petition is a claim for compensation of loss allegedly suffered by the Cancellation Order dated 03.01.2019. To make such a claim, the condition precedent is that the Cancellation Order dated 03.01.2019 has to be declared by an appropriate Court of law to be illegal and invalid which is not found in the present case. Though WP(C) No. 355/2019 was filed by the petitioner challenging the Cancellation Order dated 03.01.2019, this Court has found that there was no interference on merits and only liberty was granted to the petitioner to submit appropriate representation for revocation of the impugned order of cancellation which was directed to be considered. There has not even a passing reference on the legality or correctness of the Cancellation Order. Therefore, in the opinion of this Court, there is no foundation to lay the present claim for compensation. In any case, this Court has noticed that the Cancellation Order is based on certain observations made by this Court in its judgment dated 17.09.2018 in WP(C) No. 3112/2018, the relevant portion of which is extracted herein below:-

“12. In addition to the above, having regard to the recent unfortunate incident of capsizing of a ferry on the Guwahati-North Guwahati Ferry Service, leading to tragic loss of life, Court is of the view that it is the duty of Inland Water Transport (IWT) Department to ensure that each and every ferry which plies on the river system of the State, big or small, maintains the required safety norms. Safety of passengers travelling on ferries is of paramount consideration and there cannot be any compromise on that. Each ferry should have exact number of lifesaving jackets against each number of passengers, besides adequate stock of fuel. Each ferry must have a fitness certificate certifying that it is fit to ply on the river. Such certificate should be issued by the jurisdictional Inland Water Transport (IWT) official. Without such certificate, no ferry should be allowed to ply. The concerned official of the Inland Water Transport (IWT) Department who is In-Charge of the ferry-ghat shall carry out a safety audit of



the ferries plying on the ghat and ensure that all safety norms are complied with. In case of any eventuality taking place, for lapse of the above, the responsibility will be on the concerned official of the Inland Water Transport (IWT) Department.”

9. This Court has noticed that the said observations were made in the larger interest of the public as the Court was informed about a tragic incident, which had caused the untimely death of a number of passengers. This Court has also been apprised that the *kist* money for the period in question has been re-funded.

10. As regards the case of ***Majibur Rahman*** (supra) is concerned, this Court has seen that on a perusal of the order dated 13.11.2019 passed therein, the facts are distinguishable inasmuch as in that writ petition, the projected case was that the petitioner had suffered some loss while operating the ferry in question and therefore had sought for a direction for consideration of his representation. This Court has also perused the provisions of Rule 34 of the Rules of 1968 and is of the opinion that the said Rule does not come to the aid of the petitioner and rather would stand as an obstacle. It would be mentioned that the Rules does not permit payment of any remission or compensation.

11. In view of the above, this Court is of the considered opinion that the instant petition is devoid of any merits and accordingly, the same stands dismissed.

JUDGE

Comparing Assistant