



GAHC010139742021

Page No.# 1/10



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

Case No. : **Writ Petition (Civil) no. 4438/2021**

Rofiqul Islam @ Rafikul Islam,
S/o- Chukumuddin,
Village- Nayeralga Part-III,
P.O. Nayeralga, P.S. Bilasipara,
District - Dhubri, Assam, PIN- 783348.

.....Petitioner

-Versus-

1) The Union of India
Ministry of Home Affairs
[Disaster Management Division]
Represented by its Secretary,
'C' Wing, 3rd Floor, NDCC,
Jai Singh Road, New Delhi - 110000.

2) The State of Assam
Represented by the Chief Secretary,
to the Government of Assam,
Dispur, Guwahati - 6.

3) The Commissioner and Secretary
To The Government of Assam,
Revenue [Relief and Rehabilitation] &
Disaster Management Department [General]
Dispur, Guwahati - 6.



4) The Deputy Commissioner,
Dhubri, Assam,
District – Dhubri, Assam, PIN - 783301.

5) The Circle Officer,
Bilasipara Revenue Circle,
P.O. & P.S. Bilasipara,
District – Dhubri, Assam, PIN - 783348.

6) The Superintendent of Police,
Dhubri, Assam,
P.O. & P.S. Dhubri,
District – Dhubri, Assam, PIN - 783301.

7) The Officer-In-Charge, Bilasipara,
P.S. & P.O. Bilasipara,
District – Dhubri, Assam, PIN - 783348.

.....Respondents

Advocates :

For the Petitioner

Mr. M. Hussain, Advocate

For the Respondent nos. 1, 2, 4, 5, 6 & 7

Mr. K. Gogoi, Central Government Counsel & Additional Senior Government Advocate

For the Respondent no. 3

Ms. P.R. Mahanta, Standing Counsel, Revenue [Relief and Rehabilitation] &
Disaster Management Department [General]

Date of Hearing and Judgment & Order

01.02.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

Heard Mr. M. Hussain, learned counsel for the petitioner; Mr. K. Gogoi, learned Central Government Counsel & Additional Senior Government Advocate, Assam for the respondent nos. 1, 2, 4, 5, 6 & 7; and Ms. P.R. Mahanta, learned Standing Counsel, Revenue [Relief and Rehabilitation] & Disaster Management Department [General] for the respondent no. 3.

2. The petitioner has instituted the instant writ petition under Article 226 of the Constitution of India seeking *inter alia* a direction to the respondent authorities to disburse financial assistance/ex-gratia/compensation in terms of the Notification bearing no. RGR.386/2010/51 dated 27.07.2011 of the Revenue & Disaster Management [General] Department, Government of Assam; the Notification bearing no. 32-7/2014-NDM-I dated 08.04.2015 of the Ministry of Home Affairs [Disaster Management Division], Government of India; and the letter bearing no. RGR. 611/2015/Pt./12 dated 02.05.2015 of the Revenue and Disaster Management [General] Department, Government of Assam.

3. The case of the petitioner, projected in this writ petition, can be narrated, in brief, as follows : The petitioner is a permanent inhabitant of Village – Nayeralga Part-III, Police Station – Bilasipara, District – Dhubri. At around 03-00 p.m. on 21.09.2019, the son of the petitioner viz. Ebrahim Kholilullah [the victim], aged about 7 years, left the house to play near the bank of Gaurang river and he was found missing since then. Though a search was made for him, the petitioner and his family members came to learn that the victim fell down in

the water of Gaurang river. In connection with the incident, the petitioner's brother viz. Amir Chand Mondal lodged a First Information Report [FIR] before the Officer In-Charge, Bilasipara Police Station on 21.09.2019. On receipt of the FIR, a case of unnatural death being Bilasipara Police Station U.D. Case no. 21/2019, was registered. In the course of investigation, the police personnel from Bilasipara Police Station recovered the dead body of the victim on 25.09.2019 from a paddy field at village – Salmari under Fakirganj Police Station, District – Dhubri, which was at a distance of 12 K.M. South of Village – Nayeralga Part-III. After recovery of the dead body of the victim, the Post Mortem Examination [PME] on the body of the victim was performed on 26.09.2019 at the Civil Hospital, Dhubri. As per the PME Report, the cause of death was due to asphyxia as a result of drowning. On 17.07.2021, the Officer In-Charge, Bilasipara Police Station issued a detailed Police Report recording the fact that the victim died on 21.09.2019 as a result of drowning as the victim fell down in the water of a deep canal of Gaurang River during the period of flood. On an application being filed, the Sub-Divisional Officer [Civil], Bilasipara issued a Next of Kin [NoK] certificate on 03.02.2020 reporting that [i] the petitioner as the victim's father; [ii] Ruksana Guljar as the victim's mother; and [iii] Eakub Ali as the victim's brother, are the Next of Kins [NoKs] of the victim.

4. On the afore-said premise, the petitioner has preferred this writ petition to disburse financial assistance/ex-gratia/compensation in terms of the policies formulated by the State respondents, notified by the Notifications, dated 27.07.2011 and dated 08.04.2015, and the letter dated 02.05.2015 mentioned above.

5. The respondent no. 3 and the respondent no. 4 have filed their respective counter affidavit putting forth their versions.

6. In the counter-affidavit filed by the respondent no. 3, it has been averred that there has to be a report in the form of daily flood report of the Assam State Disaster Management Authority but the office of the respondent no. 4 did not receive any information of any report of flood on 21.09.2019 and, as such, the case of the petitioner does not come under Item 1[a] of the revised list of items & norms of assistance from the State Disaster Response Fund [SDRF]/National Disaster Response Fund [NDRF]. It has been asserted by the respondent no. 3 as well as by the respondent no. 4 in their respective counter-affidavit that the ex-gratia grant of Rs. 4,00,000/- in terms of item no. 1[a] is not eligible for disbursement for a case of drowning in the absence of a daily flood report from the Assam State Disaster Management Authority. Both the respondent no. 3 and the respondent no. 4 have, however, averred that the demand of ex-gratia made on behalf of the petitioner would be considered in terms of the Notification bearing no. RR.33/2014/66 dated 15.11.2014 of the Revenue and Disaster Management Department. As per the said Notification dated 15.11.2014, an ex-gratia at Rs. 2,00,000/- is payable to the Next of Kin [NoK] of person killed due to accident at a public place or involving a public carrier.

7. The respondent no. 3 has further averred that once the sanction is received from the jurisdictional Deputy Commissioner, the Revenue & Disaster Management [Relief & Rehabilitation] Department would process the case for releasing the amount of Rs. 2,00,000/- to the concerned DDO for payment to the Next of Kin [NoK] of the deceased. The respondent no. 4 in the counter-

affidavit has averred that the case of the petitioner would be considered as an accidental death and the process for ex-gratia grant of Rs. 2,00,000/- has been initiated.

8. I have heard the submissions of the learned counsel for the parties and have perused the materials brought on record.

9. The State Government in the Revenue and Disaster Management has issued the Notification bearing no. RGR.386/2010/22 dated 27.07.2011 providing guidelines on the subject - "Constitution and Administration of the State Disaster Response Fund [SDRF]". It may be stated that the State Disaster Response Fund [SDRF] has been constituted under Section 48[1][a] of the Disaster Management Act, 2005. The guidelines in the Notification dated 27.07.2011 have been issued under Section 62 of the Disaster Management Act, 2005. As per the Notification dated 27.07.2011, a fund, State Disaster Response Fund [SDRF] is to be maintained.

9.1. By the Notification dated 08.04.2015, items and norms of assistance from the SDRF and the National Disaster Response Fund [NDRF] in the wake of identified natural disasters have been identified and laid down making them effective from 01.04.2015. Item 1[a] of the revised list of items & norms of assistance from the SDRF/NDRF has provided for an ex-gratia payment to the family of a deceased @ Rs. 4,00,000/-, subject to certification regarding cause of death from the appropriate authority.

9.2. The source of the Notification dated 27.07.2011 and the Notification

dated 08.04.2015 is the Disaster Management Act, 2005.

9.3. The letter dated 02.05.2015 was issued in reference to the Notification dated 08.04.2015 of the Ministry of Home Affairs, Government of India. From the aforesaid Notifications/letters, it does not transpire as to how the petitioner is entitled for any compensation/ex-gratia in respect of the death of the victim i.e. the son of the petitioner by drowning.

10. The Disaster Management Act, 2005 has been enacted as a law on disaster management to provide requisite institutional mechanisms for drawing up and monitoring the implementation of the disaster management plans, ensuring measures by various wings of Government for prevention and mitigating effects of disasters and for undertaking a holistic, coordinated and prompt response to any disaster situation.

10.1. The definition of the term, 'Disaster' has been provided in Section 2[d] of the Disaster Management Act, 2005. As per Section 2[d], 'Disaster' means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.

10.2. To be called an incident as disaster, there are atleast three requirements, which are present as per the definition provided for 'Disaster' in Section 2[d]. As

per the first requirement, the disaster has to arise either from natural causes or from man-made causes. Secondly, the disaster has to result in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment. The third requirement is that the disaster has to be of such a nature or magnitude as to be beyond coping capacity of the community of the affected area. As per Section 2[a], 'affected area' means an area or part of the country affected by a disaster.

11. To bring an incident within the definition of man-made disaster, catastrophe, mishap, calamity or grave occurrence it has to occur in an area and the same has to be of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area. An incident of accident death caused due to drowning in a river in the absence of material substantiating occurrence or presence of flood, in the considered view of this Court, cannot be brought within the definition of 'Disaster' in terms of the provisions of Section 2[d] of the Disaster Management Act, 2005.

12. In view of the statements made by the respondent no. 3 and the respondent no. 4 in the afore-stated manner, it has emerged that the case of the petitioner could not be considered for disbursal of a sum of Rs. 4,00,000/- as ex-gratia payment in terms of the Notification, dated 27.07.2011 and dated 08.04.2015.

13. In order to examine the aspect as to whether the incident of death of the minor son of the petitioner due to drowning in a river would come with the ambit of the scheme formulated by the Notification dated 15.11.2014 of the

Revenue & Disaster Management Department, Government of Assam, a perusal of the Notification dated 15.11.2014 is found necessary. On perusal of the said Notification dated 15.11.2014, it is noticed that the same has, *inter-alia*, made a provision for ex-gratia grants to the Next of Kin [NoK] of person killed due to accident in public place or in public carrier [other than killed by extremist/terrorist, miscreants and due to firing of security forces] and such relief has been quantified at Rs. 2,00,000/- for each deceased person in respect of accident which had occurred in the State on or after the date of the Notification i.e. 15.11.2014. It has been brought to the notice of the Court by the learned counsel for the parties that due to certain ambiguity with regard to the term, 'public place', another Notification bearing no. R.R.94/2003/288 dated 15.10.2014 came to be issued by the Revenue & Disaster Management Department, Government of Assam for removal of the ambiguity. As per the Notification dated 15.10.2014 [supra], the word 'public place' will mean any street, alley, park, public building, any place of business or assembly open to or frequented by the public or any other place, which is open to the public view or to which public has access.

14. Having regard to the fact situation obtaining in the case, the incident of death of the minor son of the petitioner due to drowning in a river on 21.09.2019 is found to be covered by the policy formulated by the State Government in the Revenue & Disaster Management Department, and notified by the Notification dated 15.11.2014.

14.1. This Court has already recognized the rationale behind the policy formulated by the State and notified vide the Notification dated 15.11.2014, in



its order dated 04.05.2019 passed in the writ petition, W.P.[C] no. 2100/2019 [Gunalata Das vs. the State of Assam] and similar other writ petitions, by observing that the dominant purpose of the policy is to provide some succour immediately to the Next of Kin [NoK] of the deceased to tide over the initial shock and hardship before lodging claim for just compensation under the law. Thus, a claim for the relief of ex-gratia grant under the policy calls for an expeditious consideration.

15. As it has already been made clear that the process for disbursal of the ex-gratia amount in terms of the Notification dated 15.11.2014 has already been undertaken, the instant writ petition is disposed of with a direction to the said respondent authorities i.e. the respondent no. 3 and the respondent no. 4 to bring the process so undertaken for consideration of payment of ex-gratia amount in terms of the Notification dated 15.11.2014 to its logical conclusion in an expeditious manner. It is expected that the process would be completed by the respondent authorities within a period of 3 [three] months from the date of receipt of a certified copy of this order from the petitioner at the office of the respondent no. 4.

16. With the observations made and directions given, the writ petition stands disposed of. No cost.

JUDGE

Comparing Assistant