



GAHC010136592021

Page No.# 1/10



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

Case No. : WP(C)/4443/2021

TASLIMA NASRIN

W/O- LT. SAHIDUL ISLAM, R/O- VILL- MANJURI BIL, P.O. TUKRAPARA, P.S.
CHHAYGAON, DIST.- KAMRUP, ASSAM, PIN- 781137

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, REVENUE
(RELIEF AND REHABILITATION) AND DISASTER MANAGEMENT, DISPUR,
GHY-06

2:THE SECRETARY TO THE GOVT. OF ASSAM
REVENUE (RELIEF AND REHABILITATION) AND DISASTER
MANAGEMENT
DISPUR
GHY-06

3:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
ASSAM
FINANCE DEPTT.
DISPUR
GHY-06

4:THE ASSAM POWER DISTRIBUTION COMPANY LTD.
REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR
ASSAM
BIJULEE BHAWAN
PALTAN BAZAR
GHY-01

5:THE DY. COMMISSIONER
KAMRUP



AMINGAON
DIST.- KAMRUP
PIN- 781031

6:THE SUB-DIVISIONAL ENGINEER
CHHAYGAON ELECTRICAL DIVISION
ASSAM POWER DISTRIBUTION COMPANY LTD.
P.O. CHHAYGAON
P.S. CHHAYGAON
DIST.- KAMRUP
ASSAM
PIN- 781124

7:THE CHIEF ELECTRICAL INSPECTOR
ASSAM
WEST END BLOCK
1ST FLOOR
HOUSEFED COMPLEX
DISPUR
GUWAHATI- 6

For the Petitioner (s) : Mr. M. Ahmed, Advocate.

For the Respondent (s) : Mr. A. Bhattacharjee, Adv. (Revenue).

Date of hearing & Judgment : **17.10.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed by the Petitioner being aggrieved at the inaction of the Respondent Authorities in not making payment of the compensation to the Petitioner in terms with the Notification dated 15.11.2014.

2. The facts involved in the instant writ petition is that the husband of the Petitioner was engaged temporarily by the APDCL Authorities. On 13.08.2019 on instructions issued by the Divisional Engineer (Electrical), Chhaygaon, the husband of the Petitioner went to repair the damaged electric main line near the house of one Samsul Alom of Tukarpara village. While repairing the damaged electric main line, the husband of the Petitioner came in direct touch with the live electric connection and as result of which he was electrocuted and subsequently died. An FIR was lodged by the Petitioner on 01.09.2019 before the In-Charge of Goroimari Police Outpost. On receiving the said FIR, the In-Charge of Goroimari Police Outpost forwarded the same to the Officer-in-Charge of the Chhaygaon Police Station for registering the FIR dated 01.09.2016 as Chhaygaon Police Station Case No. 818/2019 under Sections 120(B)/304 A of the Indian Penal Code, 1860. A postmortem was also conducted on the body of the husband of the Petitioner and it was opined that the cause of death was "syncope as a result of ventricular fibrillation following ante-mortem electrocution".
3. The Petitioner thereupon applied for the ex-gratia payment in terms with the Notification dated 15.11.2014 of an amount of Rs. 2 lakhs on the ground that the Petitioner's husband expired on account of an accident in a public place. The Respondent Authorities having not taken any steps for payment or disbursing the ex-gratia payment, the Petitioner have approached this Court under Article 226 of the Constitution.
4. This Court vide an order dated 06.08.2022 issued notice. Vide the

said order, the report of the Respondent No. 7 was also directed to be placed.

5. It reveals from the records that the Respondent No.7 had filed an affidavit on 23.08.2023, wherein the Electrical Accident Report dated 19.09.2022 was enclosed. From Clause 10 of the report, the cause leading to the accident has been duly mentioned. From a perusal of the said Clause 10 of the report, it reveals that the accident took place as the husband of the Petitioner tried to restore the connection of another LT feeder coming from other sub-station and thereby got electrocuted as the disconnected LT feeder was somehow charged. In Clause 11 of the said report, it was mentioned that the accident took place on account of the fault of the husband of the Petitioner. Be that as it may, it is also relevant to take note that in the meantime, the Petitioner has also received the compensation from the APDCL Authorities.

6. Mr. A. Bhattacharjee, the learned counsel appearing on behalf of the Revenue and Disaster Management Department submitted that affidavit could not be filed inspite of the directions being issued by this Court, but the question involved herein pertains to the interpretation of the term 'public place' for which he submits that as the accident took place in an area which was not accessible to the public and the husband of the Petitioner could only access in view of the fact that he was authorized by the APDCL Authorities, the Petitioner was not entitled to the compensation in terms with the Notification dated 15.11.2014.

7. This Court have duly heard the learned counsel for the parties and

have also perused the materials on record.

8. The claim of the Petitioner is on the basis that the husband of the Petitioner was killed due to an accident in public place which comes within the ambit of Serial No. 3 of the Notification dated 15.11.2014. The question however arises in view of the respective submissions made by the counsels for the parties is as to whether the accident which took place, which led to the unfortunate death of the husband of the Petitioner, was in public place ?

9. Taking into account the above, this Court finds it necessary to deal with the aspect as to whether the place where the accident took place would come within the ambit of public place. The term 'public place' however has not been defined in the Notification dated 15.11.2014.

10. The learned counsel for the Revenue Department however have drawn the attention of this Court to a Notification dated 15.10.2014, wherein the term 'public place' have been defined as 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 public view or to which public have access. It is however relevant to take note of that the said Notification dated 15.10.2014 is a Notification which is in partial modification of the Notification dated 24.4.2007. The said Notification also was issued prior to the Notification dated 15.11.2014. In the opinion of this Court as the said Notification dated 15.10.2014 was in partial modification of the Notification dated 24.04.2007 and was issued prior to the Notification dated 15.11.2014, the definition of 'public place' contained

in the said Notification cannot be automatically imported to the Notification dated 15.11.2014.

11. Under such circumstances, the question therefore arises as to what is the meaning of the term 'public place'. The term 'public place' have been defined in various dictionaries, Law Lexicon as well as Encyclopedias.

12. **In Black's Law Dictionary 11th Edition**, the term 'public place' has been defined as under :-

"Public Place (15c) Any location that the local, state, or national government maintains for the use of the public, such as a highway, park, or public building.

"There has been a tendency To interpret 'public places' not merely as facilities provided by government for the public, but as any place where the public congregates, even if they are provided commercially, such as department stores, factories, theatres, sports grounds etc."

13. **In Stroud's Judicial Dictionary of Words and Phrases 7th Edition**, the term 'public place' has also been defined on the basis of the judgments delivered as well as also taking into account statutory provisions. In the said Stroud's Judicial Dictionary referring to the judgment in the case of **R. Vs. Kane** reported in [1965] **1 All E.R. 705**, the term 'public place' was defined as a place to which the public can and do have access; it doesn't matter whether they come at the invitation of the occupier or merely with his permission, or whether some payment or the performance of some formality is required before access can be had. In Stroud's Judicial Dictionary referring to the case of **R. Vs. Roberts** reported in (2004) **1 W.L.R. 181**, it was mentioned that a land adjacent

to the area where the public have access is not itself a 'public place' despite the fact that the harm could have been committed to the public from that place.

14. **In Wharton's Law Lexicon 16th Edition**, the term 'public place' was also explained on the basis of various judgments rendered by the High Court as well as the Supreme Court as well as Foreign Authorities. Referring to the judgment in the case of **State of Kerala Vs. Cherian Secarich** reported in **AIR 1967 Ker 106**, it was explained that the term 'public place' denotes that it is not necessary that the place should be a public property but if it is a private property, it must be proved that not only public could have access to it but it is one to which members of the public in fact have resort.

15. In the backdrop of the above, let this Court therefore take note of two judgments of the Supreme Court, wherein also the term 'public place' was explained. In the case of **Gaurav Jain Vs. Union of India & Ors.** reported in **(1997) 8 SCC 114**, it was observed at paragraph No. 19 that 'public place' means any place intended for use by, or accessible to the public and includes any public conveyance. It was further observed by the Supreme Court that it is not necessary that it must be a public property. Even if it is a private property, it is sufficient that the place is accessible to the public. It was further observed that it must be a place to which the public, in fact, resorts or frequents.

16. In the case of **Swaran Singh & Ors. Vs. State** reported in **(2008) 8 SCC 435**, the Supreme Court explained the difference between the

terms "in any place within public view" with the term 'public place'. At paragraph No. 28 of the said judgment, the Supreme Court opined that one should not confuse the expression "place within public view" with the expression 'public place'. It was observed that a place can be a private place but yet within the public view. It was further observed that on the other hand a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or Gaon Sabha or an instrumentality of the State and not by private persons or private bodies.

17. From the above definitions explained by the Judicial Dictionary, Lexicon etc as well as the judgments of the Supreme Court supra, the term 'public place' would have varied meanings depending upon the statutes relating to 'public place' which aspect can be very well seen from both the judgments of the Supreme Court referred to hereinabove. Therefore, it is the opinion of this Court that the term 'public place' as appearing in the Notification dated 15.11.2014 has to be given a contextual meaning inasmuch as a perusal of the Notification dated 15.11.2014 would show that the said Notification is a benevolence scheme of the State granting ex-gratia compensation on various counts. In the present case, the ex-gratia compensation is to be paid to the next of the kin of a person killed due to an accident in a public places or in public carriers. However, those killed by extremist/terrorist/miscreant and due to firing of security forces would not come within the ambit of the compensation in terms with Clause 3 of the said Notification taking into account that such category of persons

comes within the ambit of Clause 1 of the said Notification.

18. Taking into account that the exgratia payment is based upon a benevolence scheme and/or as a welfare measure, the term 'public place' in the opinion of this Court has to be given a meaning as any place intended for use by, or accessible to the public and includes any public conveyance. The emphasis of a place being a public place should not be on the basis as to who is the owner of the property but should be on the basis as to whether the place is accessible to the public. It must be a place to which the public, in fact, resorts or frequents.

19. In the backdrop of the above, if this Court takes note of the facts involved, it would be seen that the accident occurred when the husband of the Petitioner was repairing the LT Line. Admittedly as regards the access to the LT Line, it was only limited to those authorized by the APDCL Authorities. Under such circumstances, the accident which led to the death of the husband of the Petitioner on account of repairing of the LT Line cannot come within the ambit of the wide definition of 'public place' as mentioned hereinabove.

20. Consequently, this Court is of the opinion that the Petitioner would not be entitled to the benefit of the Notification dated 15.11.2014. Accordingly, the petition being devoid of merits stands dismissed.

21. Before parting with the records, this Court finds it relevant to observe that an amount of Rs.7,500/- was imposed as costs upon the Revenue and Disaster Management Department of the Government of Assam and there was a direction at paragraph No. 6 of the order dated 13.10.2023 for



depositing the said amount of Rs.7,500/- before the Registry of this Court.

22. Mr. A. Bhattacharjee, the learned counsel for the Revenue and Disaster Management Department submits that as the order was not clear what the Registry was supposed to do with the said amount, certain clarity is required to be made.

23. This Court have duly take note of the said aspect of matter and directs that upon the deposit of the amount of Rs.7,500/- by the Revenue and Disaster Management Department to the Government of Assam before the Registry of this Court, the Registry shall remit the said amount to the State Legal Service Authority.

JUDGE

Comparing Assistant