

GAHC010007302021



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

Case No. : WP(C)/249/2021

MD. SAMSHUL HAQUE
S/O- LT. SAIDUR RAHMAN BARBHUYAN, R/O- VILL- BAKOLA, P.O.
BAKOLA, P.S. JAMUGURI, DIST.- SONITPUR, ASSAM, PIN- 784182

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE SECY. TO THE GOVT. OF ASSAM, REVENUE AND DISASTER
MANAGEMENT DEPTT., DISPUR, GHY-6, ASSAM

2:JOINT SECRETARY
IMPLEMENTATION OF ASSAM ACCORD DEPTT.
DISPUR
GHY-6
ASSAM

3:THE DY. COMMISSIONER
SONITPUR
ASSAM

4:THE CIRCLE OFFICER
NADUAR REVENUE CIRCLE
SATIA
DIST.- SANITPUR
ASSAM

5:ASSAM MARTYRS AND VICTIMS AID TRUST
UZANBAZAR
GHY
ASSAM
REP. BY ITS PRESIDEN

For the Petitioner(s) : Ms. R. Saha, Advocate

For the Respondent(s) : Ms. P. R. Mahanta, SC

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 20-09-2023

1. The instant writ petition has been filed by the nephew of one Mizazur Rahman Borbhuyan who had lost his life on 20.03.1983 being a victim of the police atrocities during the Assam Agitation of 1979-85 and he was declared as a Martyr of Assam Agitation of 1979-85 which is reflected in the list of 860 Martyrs as published by the Government of Assam.

2. It is claimed in the writ petition that the Government of Assam has a Scheme for grant of Ex-gratia of an amount of Rs.5,00,000/- to the Next of Kin (NOK) of the Martyrs of Assam Agitation. The records of the writ petition shows that on 02.03.1990, an amount of Rs.30,000/- was sanctioned for the purpose of payment to one Saidur Rahman Borbhuyan as Ex-gratia for the martyr Mizazur Rahman Borbhuyan and the said amount was received. Subsequent thereto, another scheme was issued whereby an amount of Rs.5,00,000/- was declared to be the Ex-gratia to be paid as a token of respect towards the contribution of martyrs for the development of the State.

3. From the records of the writ petition, it reveals that the Circle Officer, Naduar Revenue Circle, Soetia had submitted an enquiry verification report stating that the Petitioner is the Next of Kin of Late Mizazur Rahman Borbhuyan.

Subsequent thereto, the Deputy Commissioner of Sonitpur, Tezpur had issued a communication to the Joint Secretary to the Government of Assam, Implementation of Assam Accord Department placing the various details to the effect that the Petitioner is the Next of Kin of Late Mizazur Rahman Borbhuyan along with bank details etc. for disbursement of the Ex-gratia amount. Thereupon, on 23.10.2019, the Joint Secretary to the Government of Assam, Implementation of Assam Accord Department issued a communication to the President/Secretary, Assam Martyrs and Victims Aid Trust to make necessary verification in connection with the Ex-gratia grant of Rs.5,00,000/- to the Petitioner as the Next of the Kin of Martyr Mizazur Rahman Borbhuyan who was unmarried. The Petitioner thereupon was expecting the said amount to be released but as nothing was done, a representation was submitted to the Assam Martyrs and Victims Aid Trust on 04.12.2019. However, as nothing was done, the instant writ petition was filed.

4. This Court vide an order dated 27.01.2021 issued notice. The Respondents have not filed any affidavit. It is however relevant to take note of that this Court had specifically directed the Revenue Department, Government of Assam on 04.08.2023 to file an affidavit whether a nephew of an unmarried martyr can be considered as a Next of Kin for grant of Ex-gratia in terms with the Scheme dated 10.12.2016. However, the said affidavit was not filed on the date so fixed i.e. on 28.08.2023. On 28.08.2023, this Court further granted time to the Revenue Department to file the affidavit as directed earlier and it was also observed by this Court that if no such affidavit is filed, it would be deemed that the Revenue Department had no objection to grant the benefits even to the nephew of a martyr.

5. Today, when the matter has been taken up, Mrs. P. R. Mahanta, the learned

Counsel appearing on behalf of the Revenue Department submitted that in spite of various communications, the Revenue Department of the Government of Assam have not responded to the same.

6. I have heard the learned counsels for the parties. Although, the Petitioner herein has claimed entitlement for an amount of Rs.5,00,000/- on account of some scheme for grant of Ex-gratia to the martyrs of the Assam Agitation but such scheme has not been enclosed to the instant writ petition. The Respondent Authorities have not also produced any such scheme. This Court finds it relevant to observe that the Respondent Revenue Department also in spite of various opportunities being granted have not filed any affidavit clarifying their stand as to whether the nephew of an unmarried martyr would not be entitled to the Ex-gratia and under such circumstances, this Court has to assume that the Revenue Department of the Government of Assam duly accepts that nephew of an unmarried martyr would be a Next of Kin for grant of Ex-gratia payment.

7. Be that as it may, as the said scheme has not been enclosed but there are only correspondences between the authorities which shows that there is a Scheme, this Court directs the Commissioner and Secretary, Government of Assam, Revenue and Disaster Management Department to verify whether there is any scheme for grant of Ex-gratia amount for the Next of Kin for martyrs of the Assam Agitation and if such scheme exist, the Petitioner be disbursed an amount of Rs.4,70,000/- within a period of 4 (four) weeks from the date a certified copy of the instant order is served upon the Commissioner and Secretary, Government of Assam, Revenue and Disaster Management Department. The said amount of Rs.4,70,000/- has been directed to paid (subject to existence of the scheme) on the ground that an amount of Rs.30,000/- has already been paid to the father of the Petitioner earlier.

8. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant