

GAHC010021612022



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

Case No. : WP(C)/1239/2022

ANOWARA BEGUM
W/O. LT. GOLSAPHI ALI, R/O. VILL. TULAMATI, P.O. BALIKUCHI, P.S.
BAIHATA CHARIALI, DIST. KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, DISPUR,
GUWAHATI-781006.

2:THE COMMISSIONER AND SECY.
GOVT. OF ASSAM
REVENUE (RELIEF AND REHABILITATION) AND DISASTER
MANAGEMENT
DISPUR
GUWAHATI-781006.

3:THE COMMISSIONER AND SECY.
GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GUWAHATI-781006.

4:THE DY. COMMISSIONER

KAMRUP
P.O. AND PS. AMINGAON
ASSAM.

5:THE CIRCLE OFFICER
KAMALPUR REVENUE CIRCLE
P.O. AND P.S. KAMALPUR

DIST. KAMRUP
ASSAM
PIN-781380.

6:THE OFFICER IN CHARGE

BAIHATA CHARIALI POLICE STATION
P.O. AND P.S. BAIHATA CHARIALI
DIST. KAMRUP
ASSAM
PIN-781121

Advocate for the Petitioner : MR G R A MOTTAQUEE

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 24-05-2023

Heard Mr. G.R.A Mottaquee, learned counsel for the petitioner; Mr. K. Gogoi, learned Additional Senior Government Advocate, Assam appearing for the respondent nos. 1, 4, 5 & 6; Mr. A. Bhattacharjee, learned Standing Counsel, Revenue & Disaster Management Department for the respondent no. 2; and Mr. A. Chutia, learned Standing Counsel, Finance Department for respondent no. 3.

2. In this writ petition under Article 226 of the Constitution of India, the petitioner has inter-alia sought for a direction to the respondent authorities to extend benefit in terms of the Policy formulated by the State respondents under the Disaster Management Act, 2005.

3. The projection made by the petitioner, in brief, is that at around 06-00 p.m. on 07.11.2017, the dwelling house of the petitioner was completely gutted due to fire caused by sources which were not known to the petitioner at

that time. The incident was immediately informed to the nearby police station, Baihata Chariali Police Station. On receipt of the information, the fire service team of Baihata Chariali reached the place of occurrence and tried to douse the fire. But despite attempts of the fire service team, the dwelling house of the petitioner was completely gutted. In that connection, Baihata Chariali Police Station had registered a general diary entry being General Diary Entry no. 243 dated 07.11.2017. The Directorate of Fire & Emergency Services, Assam also issued a Fire Attendance Certificate in connection with the fire incident. Immediately after the incident of fire, the petitioner stated to have submitted an application dated 08.11.2017 before the Member of Legislative Assembly [M.L.A.], Kamalpur, who had forwarded the said application to the Circle Officer, Kamalpur Revenue Circle for necessary action and the Circle Officer, Kamalpur Revenue Circle had, in turn, forwarded the same to the Deputy Commissioner, Kamrup vide his letter dated 08.12.2017. When the application of the petitioner was received by the office of the Deputy Commissioner, Kamrup, [R] i.e. the respondent no. 4, the Deputy Commissioner, Kamrup [R] wrote to the Superintendent of Police, Kamrup, Amingaon on 31.07.2018 for submission of a detail report including the cost of the gutted house of the petitioner in the fire incident dated 07.11.2017. The Additional Superintendent of Police [HQ], Kamrup, Amingaon submitted a Report on 21.08.2021 reporting inter alia that on 07.11.2017, a fire incident took place at the dwelling house of the petitioner where valuable properties of the petitioner got damaged. On receipt of the information, a police team along with C.R.P.F. personnel was sent to the place of occurrence and during enquiry, it was found that the fire took place due to electric short circuit. Accordingly, the G.D. Entry no. 243 dated 07.11.2017 was registered. The petitioner with the projection that the petitioner is entitled to

relief in terms of the provisions of the Disaster Management Act, 2005 and the notifications issued by the Government of India and the Government of Assam in the Revenue & Disaster Management Department, has preferred this writ petition. It is the case of the petitioner that in Serial no. 9 under the Items covered under the Heading : Housing of the Revised List of Items of Relief under the State Disaster Response Fund [SDRF] and the National Disaster Response Fund [NDRF], prepared pursuant to the letter bearing no. 32-7/2014-NDM-1 dated 08.04.2015 of the Ministry of Home Affairs, Government of India, relief measures for fully damaged/destroyed houses, etc. are included.

4. Mr. Gogoi, learned Senior Government Advocate and Mr. Bhattacharjee, learned Standing Counsel, Revenue & Disaster Management Department have submitted that for sanction of relief and disbursal of fund for Rehabilitation Grant under the State Disaster Response Fund [SDRF], the Deputy Commissioner is the competent authority, as per the Notification bearing no. FEB/342/2012/1[B/S] dated 26.11.2012 of the Finance [Establishment-B] Department, Government of India. It is submitted by them that as per the extant instructions, the damaged house should be an authorized construction duly certified by the competent authority. As the jurisdictional Deputy Commissioner is delegated with the power to sanction the Rehabilitation grant vide a notification no. FEB.342/2012/1[B/S] dated 26.11.2012, the instructions have been issued by the State Government to the jurisdictional Deputy Commissioners to sanction and disburse the fund under the SDRF after due verification on the following aspects :- [i] type of house; [ii] extent of damage; [iii] photo evidence; [iv] police report; [v] land status; [vi] report of the circle officer; [vii] details of residential address including bank details, etc.

5. It is brought to the notice of the court that the State Government in the Revenue and Disaster Management has issued a 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]". 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. The source of the notification dated 27.07.2011 is the Disaster Management Act, 2005.

6. 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. 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. To be called an incident as disaster, there are two requirements to be fulfilled 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. The second 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.

7. As it is found from the materials on record that after submission of application by the petitioner for relief under the Disaster Management Act, 2005, the jurisdictional Deputy Commissioner, Kamrup [R] is considering the matter, this Court is of the considered view that instead of keeping this writ petition pending, for the interest of the petitioner will be better sub-served if the writ petition is disposed of with a direction to the respondent no. 4 i.e the Deputy Commissioner, Kamrup [R] to complete the enquiry within a reasonable period of time and if after such enquiry, the petitioner is found entitled to any relief under the Disaster Management Act, 2005 and as per the extant instructions, the same shall be released immediately thereafter. It is accordingly ordered. The respondent no. 4 shall complete the entire exercise within a period of 3 [three] weeks from the date of receipt of certified copy of this order from the petitioner at her office, if not completed in the meantime. The petitioner is directed to render all assistance in the enquiry and to submit all the necessary documents at her disposal to the enquiring authority. The outcome of the enquiry is to be communicated to the petitioner immediately after conclusion of the enquiry.

8. The writ petition stands disposed of accordingly.

JUDGE

Comparing Assistant