

GAHC010026002020



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

Case No. : WP(C)/753/2020

HUSSAIN ALI
S/O- LATE ISMAIL FAKIR, VIL NO.1 MAZGAON, P.O- DAIPAM, P.S-
DALGAON, DIST- DARRANG, ASSAM, PIN- 784514

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY ITS COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
HOME AND POLITICAL DEPTT, DISPUR, GHY- 06

2:THE ASSAM STATE LEGAL SERVICES AUTHORITY
REP. BY ITS MEMBER SECRETARY
BEHIND HIGH COURT NEW BUILDING
P.O- MEGHDOOT BHABAN
PANBAZAR
GHY- 01

3:THE DISTRICT LEGAL SERVICES AUTHORITY
DARRANG
MANGALDAI
ASSAM
REP. BY ITS SECRETARY
P.S- MANGALDOI
DIST- DARRANG
ASSAM
PIN- 784125

4:THE DEPUTY COMMISSIONER
DARRANG

For the Petitioner(s) : Mr. W. Rahman, Advocate

For the Respondent(s) : Mr. J. Handique, Jr.Govt. Advocate, Assam.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
ORDER

15.11.2023

The instant writ petition has been filed by the Petitioner seeking a direction upon the Respondents to pay the revised quantum of compensation as per the Notification dated 01.02.2019 issued by the Commissioner and Secretary of the Government of Assam, Home and Political Department to the Petitioner on account of his son being killed by miscreants.

2. The facts which can be discerned from the writ petition is that the Petitioner's son one Mafiz Ali (since deceased) was killed by unknown miscreants. It is relevant to take note of that on 17.08.2008, the Petitioner informed the Daipam Police Outpost that his son went towards Udalguri Court on 16/08/2008 and did not return home. On the basis of the said report so submitted, Daipam O.P. GDE No. 233 dated 17.08.2008 was registered by the concerned police and the investigation was initiated. During investigation, the body of the Petitioner's son was recovered in decomposed condition on 31.10.2008. Upon the body being recovered, post mortem was conducted and it was opined that the cause of death was due to shock and hemorrhage due to injury sustained. Thereupon the Petitioner filed the writ petition before this Court seeking a direction for payment of ex-gratia compensation from the Government through the Revenue

& Disaster Management Department. The said writ petition was registered and numbered as W.P.(C) No.2418/2018. The Revenue & Disaster Management Department of the Government of Assam informed the Petitioner on 5.9.2019 that on account of killing of his son, as per the norm, Rs. 1 lakh was provided to the next of the kin of the deceased vide No.RR.110/2009/72 dated 4.1.2014 and the same was received by the wife of the son of the Petitioner.

3. Thereupon the Petitioner submitted an application on 3.10.2019 before the Assam State Legal Services Authority for victim's compensation under Section 357(A) of the Code of Criminal Procedure, 1973 due to killing of his son by the miscreants. The Petitioner alleges that the Petitioner received no positive signal from the said authority regarding payment of compensation for which the instant writ petition has been filed. The Petitioner further in the instant writ petition refers to a Notification dated 1.2.2019 issued by the Home and Political Department of the Government of Assam whereby the quantum of compensation under different heads were revised. In case of death, it was enhanced from Rs. 2 lakhs to Rs.5 lakhs. The Petitioner therefore claims the revised compensation on account of the death of his son in terms with the Notification dated 1.2.2019 for which the instant writ petition has been filed.

4. This Court vide an order dated 7.2.2020 issued notice. The record reveals that the Respondent No. 2 who is the Member of the Assam State Legal Services Authority had filed an affidavit. In the said affidavit, it was mentioned that immediately upon receiving the application filed by the Petitioner, the then Member Secretary of the Assam State Legal Services Authority vide Letter dated 7.11.2019 forwarded the matter to the District legal Services Authority, Darrang for taking up the issue for payment of compensation to the victim immediately as the Petitioner is the resident of Darrang. Be that as it may, the affidavit is

silent as to what further steps was taken by the District Legal Services Authority, Darrang. However, from the records, it is seen that on 29th of June, 2022, the Secretary, District Legal Services Authority had issued a Communication to the Junior Government Advocate, Assam stating inter alia that pursuant to the application filed by the Petitioner seeking compensation due to the killing of his son, an enquiry was duly conducted and after completing the enquiry an amount of Rs.25,000/- each for two minor children of Late Mafiz Ali i.e. the sons of the Petitioner was awarded with the approval of the Chairman, District Legal Services Authority, Darrang and the said amount had been duly disbursed in favour of the two minor children on 11.2.2022 in terms with the Assam Victims Compensation Scheme, 2012.

5. It further reveals from the records that an amount of Rs. 1 lakh was sanctioned vide RR.110/2009/72 dated 4.1.2014 and released to the Deputy Commissioner, Udalguri for payment to the next of the kin of Late Mafiz Ali on account of the kidnapping and killing of the son of the Petitioner.

6. This Court have also taken note of the Notification dated 1.2.2019 on the basis of which the Petitioner seeks revised compensation at the rate of Rs. 5 lakhs. From a perusal of the said Notification, it reveals that the Governor of Assam was pleased to amend the Schedule of the Assam Victims Compensation Scheme, 2012 by revising the quantum of compensation awarded in respect to the said scheme. The revised Schedule stipulates that for death, the maximum and the minimum amount of compensation was Rs.5 lakhs. This Court also finds it relevant to take note of that in the said Notification, it has been mentioned that the earlier Schedule of the Assam Victims Compensation Scheme, 2012 have been superceded and the Notification dated 1.2.2019 shall be effective from the date of the said Notification. The said Notification however does not in

any manner stipulate that the payment in terms with the said Notification is only applicable in respect to incidents occurring after the issuance of the said Notification but only stipulates that the said Notification dated 1.2.2019 shall be effective from the date of issuance of the Notification. Therefore, as on the date on which the application of the Petitioner is to be considered the Notification dated 1.2.2019 has to be taken note of.

7. In the backdrop of the above, if this Court takes note of the facts involved, it would be seen that the next of the kin of Late Mafiz Ali (the son of the Petitioner) had already received Rs.1,50,000/- i.e. Rs. 1 lakh from the Revenue and Disaster Management Department and Rs.50,000/- from the District Legal Services Authority, Darrang. However, the entitlement of the next of the kin of the Petitioner's son in terms with the Notification dated 1.2.2019 would be a total amount of Rs. 5 lakhs. Therefore, this Court directs the District Legal Services Authority, Darrang to pass an additional award of an amount of Rs. 3,50,000/- in favour of the next of the kin of Late Mafiz Ali and upon passing the said additional award the same be forwarded to the Commissioner and Secretary, Home and Political Department of the Government of Assam as per the provisions of the Assam Victims Compensation Scheme, 2012. The Commissioner and Secretary, Home and Political Department of the Government of Assam upon receipt of the said additional award of Rs. 3,50,000/- shall issue appropriate sanction and disburse the amount to the District Legal Services Authority, Darrang and thereupon upon receipt of the said amount, the Chairman of the District Legal Services Authority, Darrang or the Secretary, District Legal Services Authority, Darrang shall disburse the said amount to the next of the kin of Late Mafiz Ali. The said exercise be carried out by the authorities so directed herein within a period of 5 months from the date,

certified copies of the instant order are served upon the Respondent Nos. 1 and 3.

8. With the above observations and directions, the Petition stands disposed.

JUDGE

Comparing Assistant