

GAHC010040742021



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

Case No. : WP(C)/1615/2021

SANJU ENGTI KATHAR AND 2 ORS
S/O LATE KUL SING ENGTI(FATHER) AND LATE BIBI KRAMSAPI
(MOTHER) R/O VILL. RONGTHEANG NEAR BISHOP HOUSE, P.O. AND P.S.
DIPHU, DIST. KARBI ANGLONG, ASSAM.

2: JOHNNY ENGTI
S/O LATE KUL SING ENGTI(FATHER) AND LATE BIBI KRAMSAPI
(MOTHER) R/O VILL. RONGTHEANG NEAR BISHOP HOUSE
P.O. AND P.S. DIPHU
DIST. KARBI ANGLONG
ASSAM.

3: JUGITA ENGTIPI
D/O LATE KUL SING ENGTI(FATHER) AND LATE BIBI KRAMSAPI
(MOTHER) R/O VILL. RONGTHEANG NEAR BISHOP HOUSE
P.O. AND P.S. DIPHU
DIST. KARBI ANGLONG
ASSAM

VERSUS

THE ASSAM POWER DISTRIBUTION COMPANY LIMITED (APDCL) AND 7
ORS
REPRESENTED BY THE CHAIRMAN, APDCL, BIJULI BHAWAN,
PALTANBAZAR, GUWAHATI 781001, DIST. KAMRUP (M), ASSAM.

2:THE MANAGING DIRECTOR

ASSAM POWER DISTRIBUTION CO. LTD. (APDCL) BIJULI BHAWAN
PALTANBAZAR
GUWAHATI 781001
DIST. KAMRUP (M)
ASSAM.

3:THE CHIEF GENERAL MANAGER (D AND S)
APDCL (CAR)
GUWAHATI 781001
DIST. KAMRUP (M)
ASSAM.

4:THE CHIEF EXECUTIVE OFFICER KANCH ELECTRICAL CIRCLE
APDCL (CAR)
DIPHU
DIST. KARBI ANGLONG
ASSAM.

5:THE ASSTT. GENERAL MANAGER
DIPHU ELECTRICAL DIVISION
APDCL (CAR)
DIPHU
DIST. KARBI ANGLONG
ASSAM.

6:THE DEPUTY COMMISSIONER
KARBI ANGLONG
DIST. DIPHU.

7:SMTI ANJELA @ ANJILA BONGRUNGPI
C/O- MEREY TERANPI (DAUGHTER)
RAKESH BORA (SON-IN-LAW)
VILL.- RENGMALANG
WARD NO. - 10
NEW JENCTION (BOC)
P.O. AND P.S.- DIPHU
DIST.- KARBI ANGLONG
PIN- 782460
ASSAM.

8:PANANG ENGTI
C/O- MEREY TERANPI (DAUGHTER)
RAKESH BORA (SON-IN-LAW)
VILL.- RENGMALANG
WARD NO. - 10
NEW JENCTION (BOC)
P.O. AND P.S.- DIPHU
DIST.- KARBI ANGLONG

PIN- 782460
ASSAM

Advocate for the Petitioner : MR. R SARMA

Advocate for the Respondent : SC, APDCL

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 13.03.2023

Heard Mr. R. Sarma, learned counsel for the petitioner. Also heard Mr. S. P. Sarma, learned standing counsel for the respondent Nos. 1, 2, 3, 4 & 5 and Mr. S. R. Baruah, learned counsel for the respondent No. 6. None has appeared on behalf of the respondent Nos. 7 & 8.

2. It may be relevant herein to take note of that the Lawazima Court vide order dated 29.06.2022 had observed that from the perusal of the postal journal, it appeared that the notice was issued to the respondent Nos. 7 and 8 in the correct address and track consignment record reveals that the notice have been delivered to the respondent Nos. 7 and 8 on 05.05.2022 and therefore place the matter before this Court in terms of Section 27 of the General Clauses Act, 1897 read with Order- 5 Rule- IX Sub-Rule- V (proviso) of the Code of Civil Procedure.

3. It further appears that on 19.10.2022, this Court deemed that service upon the respondent Nos. 7 and 8 had been complete. Taking into account the above, this Court therefore, takes up the matter for disposal at the admission stage itself. The petitioners herein are the sons and daughters of one- Kul Sing Engti (since deceased). It is the case of the petitioners that Late Kul Sing Engti was married to One- Bibi Kramsapi (since deceased). It appears from the Annexure- 1 and Annexure- 2 to the writ petition that Late Bibi Kramsapi expired on 19.04.2017 thereby pre-deceasing late Kul Sing Engti who expired on

22.11.2019 that is on the same day on which he had retired. Thereupon as the respondents-APDCL did not pay the GPF, Gratuity, Leave Encashment, Insurance, the petitioners have approached this Court under Article 226 of the Constitution.

4. Mr. Sarma, learned counsel appearing for the petitioners submits that in the meantime during the pendency of the instant writ petition, the petitioners have already received the GPF as well as Leave Encashment which was otherwise due to their father late Kul Sing Engti. The present writ petition is, therefore, survives as regards the entitlement of the petitioners in respect of the gratuity and the Insurance to which late Kul Sing Engti would have been otherwise entitled to if he would have been alive.

5. The stand of the respondent-APDCL herein is that the said respondent have already processed the papers. However, while processing, a communication was received from one- Beaulat Beypi, President of an organization under the name and style of "KAWJF" wherein it has been mentioned that late Kul Sing Engti had a second wife, namely, Smt. Anjela Bongrungpi who is also entitled to equal portion along with the family members of the late Kul Sing Engti's first wife. It has been further submitted that pursuant there to the said Anjela Bongrungpi- the respondent No. 7 herein had also issued a communication on 28.08.2020 to the Assistant General Manager, APDCL where a claim was made for entitlement of release of the pension benefits to her and not to release any benefit to the petitioners till such time she submits the documents as required. Along with the said communication, a deed of marriage agreement executed before the Notary Public dated 23rd May, 2008, an election identity card as well as Aadhar Card were enclosed. Further to that the Pan Card of the respondent No. 7 was also enclosed. It further appears

that on the basis of said communication dated 28.08.2020 submitted by the respondent No. 7, the Chief General Manager (D&S), APDCL (CAR), Guwahati had issued communication to the Assistant General Manager, Diphu, Electrical Division on 03.09.2020 whereby it was mentioned that the claim for family pension made by the petitioners herein cannot be processed without receiving the application for family pension by the respondent No. 7. Further to that vide another communication dated 30.10.2020, the Chief General Manager, (D&S) had again asked the Assistant General Manager, Electrical Division to pursue the matter with the respondent No. 7 for submitting her application for family pension along with all relevant documents for early settlement of family pension case. It was further directed that the service book of late Kul Sing Engti and the family pension papers of the petitioner No. 1 herein was returned which may be re-submitted along with application of the respondent No. 7. From a perusal of the said affidavit-in-opposition filed by the respondent-APDCL, it is apparent that on account of the communication dated 28.08.2020 issued by the respondent No. 7 herein, the further retrial benefits have not be paid to the petitioners.

6. It further appears that the petitioners pursuant to the said affidavit-in-opposition so filed had filed a reply wherein at paragraph- 5 it was specifically mentioned that there was no marriage solemnized between their father late Kul Sing Engti with the respondent No. 7 herein and she is not the wife of late Kul Sing Engti. Further to that it was also mentioned that respondent No. 8 was never the adopted son of late Kul Sing Engti.

7. I have heard the learned counsels for the parties.

8. As already stated, the respondent Nos. 7 & 8 are not represented. From the records, it is apparent that the late Kul Sing Engti admittedly was married to late Bibi Kramsapi who pre-deceased him and expired on 19.04.2017. The

alleged marriage between the late Kul Sing Engti with the respondent No. 7 as stated in the communication dated 28.08.2020 was on the basis of marriage agreement executed on 23rd May, 2008. At this stage, this Court finds it relevant to take note of Section 2(2) of the Hindu Marriage Act, 1955 which stipulates that the provisions of the said Act shall not apply to the members of any Scheduled Tribe within the meaning of Clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

9. Admittedly, late Kul Sing Engti, late Bibi Kramsapi and the respondent No. 7 belong to the Karbi Tribe which is a Scheduled Tribe in terms with the Constitution (Scheduled Tribes), Order, 1950 and would come within the meaning of Clause (25) of Article 366 of the Constitution.

10. The learned counsel appearing on behalf of the petitioners as well as the learned counsel appearing on behalf of the respondent-APDCL have not, however, produced before this Court any Central Government notification thereby applying the provisions of the Hindu Marriage Act, 1955 to the Karbi Tribe. Further it also appears that the respondent No. 7 claims to be the wife of late Kul Sing Engti and the alleged purported marriage have taken on 23rd May, 2008 during the lifetime of late Bibi Kramsapi. Had the Hindu Marriage Act, 1955 been applicable then the said alleged purported marriage between late Kul Sing Engti and the respondent No. 7 would be a void marriage. But however, the said aspect of the matter is not clear from either the pleadings or any documents placed before this Court as regards the applicability of the Hindu Marriage Act, 1955 to the Karbi Tribe. The important aspect of the matter is as to whether the respondent No. 7 was at all married to late Kul Sing Engti which is the disputed

question of fact inasmuch as it is only in the communication dated 28.08.2020 that the respondent No. 7 have alleged that she had married to late Kul Sing Engti which, however, has denied specifically in paragraph- 5 of the affidavit-in-reply by the petitioners. Taking into account of the said aspect of the matter, this Court is of the opinion that the interest of justice would be met, if the instant writ petition stands disposed of thereby granting liberty to the respondent- APDCL to carry out the fact finding enquiry as to whether the Hindu Marriage Act, 1955 have been made applicable to the Karbi Tribe and if it is not applicable then in that regard on the basis of materials on record which both the petitioners as well as the respondent No. 7 would have an opportunity to place on being put to notice by the APDCL to decide as to whether the respondent No. 7 is the wife of the late Kul Sing Engti. Depending upon the said decision, the respondent authorities shall disburse the pensionary benefits/retrial benefits to the concerned petitioners and/or the respondents in accordance with the applicable provisions.

11. This Court further directs the respondent-APDCL to forthwith issue notice to the petitioners as well as the respondent No. 7 and thereupon decide the said issues as above mentioned within a period of 3(three) months from the date of instant order.

12. With the above observation, the instant petition stands disposed of.

JUDGE

Comparing Assistant