

GAHC010127262021



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

Case No. : WP(C)/4057/2021

BHARAT GOGOI

S/O- LT. TULASI GOGOI @ TULSHI GOGOI, VILL- RAMNAGAR, P.O. JAGUN,
P.S. LEKHAPANI, DIST.- TINSUKIA, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.

REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM, DISPUR, GHY-6

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPTT.
RELIEF AND REHABILITATION BRANCH
DISPUR
GHY-06

3:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPTT.
DISPUR
GHY-06

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

5:THE DY. COMMISSIONER
TINSUKIA
TINSUKIA
DIST.- TINSUKIA
ASSAM
PIN- 786125

6:THE CIRCLE OFFICER
TIRAP REVENUE CIRCLE

TIRAP
DIST.- TINSUKIA
ASSAM
PIN- 78618

Advocate for the Petitioner : MR. A M KHAN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 30-01-2023

Heard Mr. A.M. Khan, learned counsel for the petitioner; Mr. N. Goswami, learned Junior Government Advocate, Assam; and Mr. A. Bhattacharjee, learned Standing Counsel, Revenue & Disaster Management Department for the respondent no. 2. There is no representation on behalf of the respondent no. 4 today on call.

2. The case projected on behalf of the petitioner is that his father, Late Tulasi Gogoi @ Tulshi Gogoi was killed and/or suspected to be killed in extremist violence prior to 22.06.2004. The petitioner and his brother, Sri Krishna Gogoi being sons, are the Next of Kins [NoKs] of Late Tulasi Gogoi @ Tulshi Gogoi. Upon the death of Late Tulasi Gogoi @ Tulshi Gogoi [hereinafter referred to as 'the deceased person, for easy reference] the petitioner and his brother, Sri Krishna Gogoi applied for **ex gratia** grant before the respondent authorities in terms of the then prevalent scheme for **ex gratia** under 'the Assam Public Services [Appointment of Family Members of Persons Killed by Extremists/Terrorists] Rules, 1992' ['the 1992 Rules', for short] as the next of kins of the deceased person. The matter of **ex gratia** under the 1992 Rules was duly examined and after proper verification, the respondent authorities sanctioned an amount of Rs. 1,00,000/- to the petitioner and his brother, Sri Krishna Gogoi as **ex gratia** grant as the next of kins of the deceased person under the 1992 Rules vide a letter bearing no. RR.97/2000/27 dated 18.01.2001.

3. The present writ petition has been preferred by the petitioner seeking *inter alia* a direction to the respondent authorities to disburse an additional amount of Rs. 2,00,000/- as **ex gratia** in terms of a subsequent notification dated 22.06.2004.

4. In the affidavit-in-opposition filed by the respondent no. 3 on 14.12.2021, it has been averred that by a letter bearing no. ABP.121/92/Pt.V/140 dated 05.08.2004 issued in reference to earlier Notification bearing no. ABP.121/92/Pt.V/136 dated 22.06.2004, it has been mentioned that the measures taken by the Notification dated 22.06.2004 for enhancement is prospective in nature. Reference is also made to an Office Memorandum bearing no. ABP24/2009/VoI/658 dated 29.07.2013.

5. The Assam Public Services [Appointment of Family Members of Persons Killed by Extremists/Terrorists] Rules, 1992 stood repealed by a Notification no. ABB.121/92/Pt-V/135 dated 22.06.2004. By another Notification no. ABB.121/92/Pt-V/136 dated 22.06.2004, a new set of measures were formulated by the State Government to give relief to the affected families in the extremists violence. By the said Notification no. ABB.121/92/Pt-V/136 dated 22.06.2004, the amount **ex gratia**, payable to the next of kin of a person killed in extremists violence, had been enhanced to Rs. 3,00,000/-. The Government of Assam in the Personnel Department by its Communication dated 05.08.2004 had intimated that the alternative measures formulated by the Government by Notification dated 22.06.2004 [supra] would take effect from 22.06.2004 and measures would be prospective. It was further informed that the cases which had been decided already as regards **ex gratia** payment, etc. before issuance of the said letter would not be opened again.

6. A Division Bench of this Court in a judgment and order dated 09.06.2010 passed in the writ petition, W.P.[C] 3355/2007 [**Dhaniswar Basumatary vs. State of Assam and others**] had held that the Next of Kins [NoKs] of the victims who had received the benefit of **ex-gratia** grant of Rs. 1,00,000/- under the earlier scheme, would be entitled to the enhanced amount of **ex gratia** payment after adjustment of amount already paid to them.

7. After the judgment of the Hon'ble Division Bench rendered on 09.06.2010 in the case

titled **Dhaniswar Basumatary vs. State of Assam and others**, the Government of Assam in the Personnel [B] Department issued an Office Memorandum dated 29.07.2013. As per the said Office Memorandum, the State Government after detailed examination of the matter in the light of the judgment dated 09.06.2010 rendered in **Dhaniswar Basumatary** [supra], decided to implement the same in an expeditious manner. Clause IV[v] of the Office Memorandum dated 29.07.2013 had mentioned that in case of persons killed in extremists violence prior to 2004 but whose relatives did not apply for any appointment prior to 22.06.2004 and had applied after 22.06.2004 and may or may not have received **ex gratia** grant under the Notification dated 22.06.2004 i.e. Rs. 3,00,000/-, they would be given appropriate **ex-gratia** payment as per the Notification dated 22.06.2004 adjusting the amount already received, if any.

8. Mr. Khan, learned counsel for the petitioner has referred to an order dated 08.03.2017 passed in W.P.[C] 1368/2017 [**Golapjan Bewa @ Guleza Bewa & 13 others vs. the State of Assam and 11 others**] whereby this Court in a similar situation, had directed the petitioners therein, similarly situated like the petitioner herein, to make proper application before the respondent authorities and upon such applications being made, the respondent authorities would make an enquiry as to whether any relatives of the petitioners therein was killed in any extremists violence prior to 22.06.2004 and in the event, upon such enquiry, the respondent authorities arrived at a conclusion that the Next of Kin [NoK] of the petitioners were so killed and the degree of relationship with the petitioner entitled the petitioners to payment of the required compensation, the respondent authorities shall pass orders for the purpose. Mr. Khan has also submitted that an application in this regard seeking the enhance amount of **ex gratia** has already been submitted before the Deputy Commissioner, Tinsukia on 30.07.2021.

9. Mr. Goswami has submitted that the present writ petition can be disposed of, at the admission stage, by directing the petitioner to submit a proper application before the Deputy Commissioner, Tinsukia and upon such application being filed, the Deputy Commissioner shall examine and verify about the entitlement of the petitioner regarding enhanced **ex gratia** amounts and thereafter, may forward a proposal to the respondent no. 1 who, in turn, may

disburse the enhanced **ex gratia** grant, if the petitioner and any other person[s] is/are found entitled as a Next of Kins [NoKs] of the deceased person killed in extremists violence.

10. Having gone through the fact situation obtaining in the case; taking note of the submissions advanced by the learned counsel for the parties; and the rationale behind the policies so formulated, this Court is of the considered view that the claim for the relief in the form of additional **ex gratia** grant to the petitioner made in this writ petition as the Next of Kin [NoK] of the deceased person killed in extremists violence, the facts of which are briefly narrated above, is to be considered and verified first at the end of the Deputy Commissioner, Tinsukia and after such verification and consideration by calling from the reports from the concerned Circle Officers and other concerned authorities and also from the petitioner, wherever found necessary, the proposal shall thereafter, be forwarded by the Deputy Commissioner along with a report to the respondent no. 1, for release of **ex gratia** grant in term of the Notification dated 22.06.2004; the Office Memorandum dated 29.07.2013; and the observations made in **Dhaniswar Basumatary** [supra]; if the petitioner and/or any other person[s] is/are found entitled for the **ex gratia** amount of Rs. 3,00,000/-. The respondent no. 1 shall thereafter, release the quantum of additional **ex gratia** grant to the petitioner and/or if such other person[s] is/are found entitled, in terms of the notification dated 22.06.2004; the Office Memorandum dated 29.07.2013; and the observations made in **Dhaniswar Basumatary** [supra]; after adjustment of the amount of Rs. 1,00,000/- already paid for the death of the deceased person, mentioned above.

11. The entire exercise in respect of the case involved in this writ petition should be completed by the above respondent authorities as expeditiously as possible, preferably within a period of 3 [three] months from the date receipt of a certified copy of this order by the office of the respondent no. 4 i.e. the Deputy Commissioner, Tinsukia along with an application and a copy of the writ petition with the annexures from the petitioner. The petitioner is directed to extend his cooperation during the process of verification likely to be undertaken to verify the claim by placing all the supporting materials at his disposal in respect of the claim.

12. With the observations made and the directions given above, this writ petition stands disposed of. No cost.

JUDGE

Comparing Assistant