

GAHC010072732024



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

Case No. : WP(C)/2166/2024

NASIRAN KHATUN @ NASIRON BIBI
W/O- LATE NUR ISLAM, VILL.- NAYARALGA PART-II, P.O. NAYARALGA, P.S.
BILASIPARA, DIST. DHUBRI, ASSAM, PIN- 783348, PRESENTLY RESIDING
AT SURJYAKHATA, BILASIPARA TOWN, P.O. AND P.S. BILASIPARA, DIST.
DHUBRI, ASSAM, PIN- 783348.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, HOME AND POLITICAL DEPARTMENT, DISPUR, GUWAHATI-06.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GHY-06.

3:THE ASSAM STATE LEGAL SERVICES AUTHORITY
REPRESENTED BY ITS MEMBER SECRETARY
GHY-01.

4:THE DISTRICT LEGAL SERVICES AUTHORITY
DHUBRI
ASSAM
REPRESENTED BY ITS MEMBER SECRETARY
P.O. AND DIST. DHUBRI
ASSAM
PIN- 783301.

5:THE CHAIRMAN
DISTRICT LEGAL SERVICES AUTHORITY
DHUBRI

ASSAM
PIN- 783301

Advocate for the Petitioner : MR. A MOBARAQUE

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 24-04-2024

Heard Mr. A. Mobaraque, learned counsel for the petitioner. Also heard Ms. R.S. Choudhury, learned standing counsel for the respondent no.3 as well as Ms. S. Baruah, learned Govt. Advocate appearing for the respondent nos.1, 4 and 5 and Ms. R.M. Baruah, learned standing counsel for the Finance Department appearing for the respondent no.2.

2. At the outset the learned counsel for the petitioner has submitted that the petitioner has approached this Court earlier by filing WP(C) 1787/2024, which was permitted to be withdrawn with liberty to file afresh. Accordingly, this writ petition has been filed again.

3. By filing this writ petition under Article 226 of the Constitution of India the petitioner has prayed for quashing of the order dated 07.06.2022 passed by the Secretary, District Legal Services Authority, Dhubri by which the petitioner was awarded a compensation of Rs.2.00 lakh as final compensation to the victim under the Assam Victim Compensation Scheme, 2012.

4. The case of the petitioner is that her husband Nur Islam, went missing on 04.08.2011, and his dead body was recovered on 01.09.2011 from a jungle and accordingly, Bilasipara PS case no.549/2011 was registered. In course of

time, charge sheet was submitted in the said case and the matter was tried as Sessions Case no.170/2014 under section 120B/143/149/302/201 IPC. In the judgment passed in the said Sessions case on 11.10.2018, the learned Addl. Sessions Judge, Bilasipara had recommended victim compensation in favour of the petitioner. The said order led to the District Legal Services Authority, Dhubri taking up the issue of compensation and awarded the compensation of Rs.2.00 lakh vide impugned order dated 07.06.2022.

5. In the meanwhile, the Govt. of Assam had issued a notification dated 01.02.2019 by which the quantum of compensation has been increased to Rs.5.00 lakh under Sl. No.6 of the schedule thereof. Accordingly, it is submitted that the petitioner would be entitled to a higher compensation.

6. The learned standing counsel for the respondent no.3 has drawn the notice of the Court on the judgment and order dated 03.04.2019 passed by this Court in WP(C) 1547/2019 which was filed by one Abdul Mannan. The said Abdul Mannan has stated to be the father-in-law of the petitioner.

7. It is also submitted that the said Abdul Mannan, the petitioner in WP(C) 1547/2019, had approached this Court for taking the benefit of Assam Victim Compensation Scheme, 2012 in connection with Sessions case no.170/2014 and this Court by order dated 03.04.2019, allowed the writ petition by directing the District Legal Services Authority, Dhubri to take up the claim of the said Abdul Mannan, petitioner in WP(C) 1547/2019 for victim compensation under section 357A Cr.P.C. after due enquiry and decide the quantum of compensation to be awarded in terms of Govt. notification dated 01.02.2019 within 2(two) months from the date of receipt of the said order. It is submitted that for non-compliance of the said order, as per her instructions, the contempt

petition is also pending before this Court.

8. The learned standing counsel for the respondent no.3 has submitted that he has received instructions to the effect that the victim's compensation under the Assam Victim Compensation Scheme, 2012 a sum of Rs.2.00 lakh has already been released to the petitioner pursuant to order dated 07.06.2022 passed by the Secretary, District Legal Services Authority, Dhubri.

9. Once the said order has been complied with and the compensation has been received by the petitioner without any protest, this writ petition has become infructuous. Having received such compensation without first registering objection or without taking leave of the District Legal Services Authority, Dhubri to maintain claim for compensation as per notification dated 01.02.2019, this present writ petition would not be maintainable.

10. Moreover, the Court is of the considered opinion that if already there has been an adjudication with regard to entitlement of victim compensation under the Assam Victim Compensation Scheme, 2012 which was in favour of Abdul Mannan, the petitioner in WP(C) 1547/2019, it would be open to the petitioner to choose either of the two remedies available to her. It would be also open to the petitioner to have a judicial order of sharing of the compensation between her and her father-in-law and/or to demonstrate that she has a prior right to have compensation in precedence to the right of her father-in-law to receive compensation. The other option open to the petitioner is to apply for modification of the judgment dated 03.04.2019 passed in WP(C) 1547/2019 so that conflict of judicial opinion can be avoided.

11. Be that as it may, subject to whatever choice the petitioner would like to avail, in this case the respondent no.3 has demonstrated that an order has

already been passed for granting of award of victim compensation to Abdul Mannan the petitioner in WP(C) 1547/2019. Therefore, the order dated 07.06.2022, impugned herein appears to be in direct conflict with the direction contained in order dated 03.04.2019 passed in WP(C) 1547/2019. Therefore, the subsequent order dated 07.06.2022 passed by the District Legal Services Authority, Dhubri be ought not to have been otherwise implemented till the order dated 03.04.2019 passed in WP(C) 1547/2019 remains in force. Nonetheless, as per instructions received by the learned counsel for the respondent no.3, the petitioner has been paid the compensation amount. Therefore, we refrain from passing any order to determine respective right of the petitioner and/ or Abdul Mannan over the compensation amount, which is left open to be decided by a competent Civil Court.

12. Be that as it may, in view of the observations made in this order, this writ petition stands closed.

13. We clarify that notwithstanding order dated 03.04.2019 in WP(C) 1547/2019 or order passed in this writ petition today, the right of the petitioner Nasiran Khatun @ Nasiron Bibi and/ or right of Abdul Mannan, petitioner in WP(C) 1547/2019 have not been decided and the issue is left open to be decided by competent Civil Court having jurisdiction.

14. The learned Govt. Advocate shall transmit a downloaded copy of this order to the District Legal Services Authority, Dhubri for their information.

JUDGE

Comparing Assistant