

GAHC010139102019



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

**Case No. : WP(C)/4201/2019**

SAYAD ALI  
SON OF IMAN ALI, RESIDENT OF VILLAGE- UTTAR KHATOBAL, P.S.  
RUPAHI, SUB-DIVN.- NAGAON, DIST.- NAGAON (ASSAM), PIN- 782125.

VERSUS

THE PRINCIPAL SECRETARY/COMMISSIONER AND SECRETARY TO THE  
GOVT. OF ASSAM AND 6 ORS.  
DEPARTMENT OF POWER (ELECTRIC), DISPUR, GUWAHATI- 781006.

2:ASSAM POWER DISTRIBUTION COMPANY LIMITED (APDCL)  
REPRESENTED BY CHAIRMAN  
BIJULEE BHAWAN  
PALTAN BAZAR  
GUWAHATI- 781001.

3:THE MANAGING DIRECTOR

ASSAM POWER DISTRIBUTION COMPANY LIMITED (APDCL)  
BIJULEE BHAWAN  
PALTAN BAZAR  
GUWAHATI- 781001.

4:THE CHIEF GENERAL MANAGAR  
(HRA)  
ASSAM POWER DISTRIBUTION COMPANY LIMITED (APDCL)  
BIJULEE BHAWAN  
PALTAN BAZAR  
GUWAHATI- 781001.

5:THE GENERAL MANAGER  
NAGAON ZONE

ASSAM POWER DISTRIBUTION COMPANY LIMITED (APDCL)  
CAR  
NAGAON- 782001.

6:THE CHIEF EXECUTIVE OFFICER  
NAGAON ELECTRICAL SERVICE  
ASSAM POWER DISTRIBUTION COMPANY LIMITED (APDCL)  
CAR  
NAGAON- 782001.

7:THE CHIEF ELECTRICAL INSPECTOR/ ELECTRICAL INSPECTORS  
ASSAM INSPECTORATE OF ELECTRICITY  
WEST END BLOCK  
1ST FLOOR  
HOUSEFED COMPLEX  
DISPUR  
GUWAHATI. PIN- 781006

Linked Case : WP(C)/4221/2019

SHAJIDA KHATUN  
W/O. MAINUL HAWUE @ MOINUL HAQUE  
R/O. VILL. UTTAR KHATOBAL  
P.S. RUPAHI  
SUB-DIVN. NAGAON  
DIST. NOWGAON  
ASSAM  
PIN-782125.

VERSUS

THE PRINCIPAL SECRETARY/COMMISSIONER AND SECRETARY TO THE  
GOVT. OF ASSAM AND 6 ORS.  
DEPTT. OF POWER (ELECTIC)  
DISPUR  
GUWAHATI-781006.

2:ASSAM POWER DISTRIBUTION COMPANY LTD. (APDCL)

REP. BY CHAIRMAN  
BIJULIEE BHAWAN  
PALTAN BAZAR  
GUWAHATI-781001.

3:THE MANAGING DIRECTOR

ASSAM POWER DISTRIBUTION CO. LTD. (APDCL)  
BIJULIEE BHAWAN  
PALTAN BAZAR  
GUWAHATI-781001.

4:THE CHIEF GENERAL MANAGER

(HRA)  
ASSAM POWER DISTRIBUTION CO. LTD. (APDCL)  
BIJULIEE BHAWAN  
PALTAN BAZAR  
GUWAHATI-781001.

5:THE GENERAL MANAGER

NAGAON ZONE  
ASSAM POWER DISTRIBUTION COMPANY LTD. (APDCL)  
CAR  
NAGAON-782001.

6:THE CHIEF EXECUTIVE OFFICER

NAGAON ELECTRICAL SERVICE  
ASSAM POWER DISTRIBUTION COMPANY LTD. (APDCL)  
CAR  
NAGAON-782001.

7:THE CHIEF ELECTRICAL INSPECTOR/ ELECTRICAL INSPECTORS

ASSAM INSPECTORATE OF ELECTRICITY  
WEST END BLOCK  
1ST FLOOR  
HOUSEFED COMPLEX  
DISTPUR  
GUWAHATI-781006.

Linked Case : WP(C)/4395/2019

FATEMA HEKIM AND ANR.  
M/O- LT ANISUR RAHMAN @ ANICHUR RAHMAN  
R/O- VILL- DAKSHIN KHATOBAL  
P.S. RUPAHI  
SUB-DIVN.- NAGAON  
DIST- NAGAON (ASSAM)  
PIN- 782125

2: SALMA BEGUM  
W/O- LT. ANISUR RAHMAN @ ANICHUR RAHMAN

R/O- VILL- DAKSHIN KHATOBAL  
P.S. RUPAHI  
SUB-DIVISION- NAGAON  
DIST- NAGAON (ASSAM)  
PIN- 782125  
VERSUS

THE PRINCIPAL SECRETARY/COMMISSIONER AND SECRETARY TO THE  
GOVT. OF ASSAM AND 6 ORS.  
DEPTT. OF POWER (ELECTRIC) DISPUR  
GHY-6

2:ASSAM POWER DISTRIBUTION COMPANY LTD.. (APDCL)  
REP. BY CHAIRMAN  
BIJULEE BHAWAN  
PALTAN BAZAR  
GHY-1

3:THE MANAGING DIRECTOR  
ASSAM POWER DISTRIBUTION COMPANY LTD. (APDCL)  
BIJULEE BHAWAN  
PALTAN BAZAR  
GHY-1

4:THE CHIEF GENERAL MANAGER  
(HRA)  
ASSAM POWER DISTRIBUTION COMPANY LTD. (APDCL)  
BIJULEE BHAWAN  
PALTAN BAZAR  
GHY-1

5:THE GENERAL MANAGER  
NAGAON ZONE  
ASSAM POWER DISTRIBUTION COMPANY LTD. (APDCL)  
CAR  
NAGAON- 782001

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NAGAON ELECTRICAL SERVICE  
ASSAM POWER DISTRIBUTION COMPANY LTD. (APDCL)  
CAR  
NAGAON- 782001

7:THE CHIEF ELECTRICAL INSPECTOR/ELECTRICAL INSPECTORS  
ASSAM INSPECTORATE OF ELECTRICITY  
WEST END BLOCK  
1ST FLOOR  
HOUSEFED COMPLEX

DISPUR  
GHY-6

Linked Case : WP(C)/4280/2019

RUBIA KHATUN  
W/O LT. HABIBUR RAHMAN  
R/O VILL. MAHERIPAR  
P.S. JURIA  
SUB-DIVN. NAGAON  
DIST. NAWGAON (ASSAM)  
PIN-782124

VERSUS

THE PRINCIPAL SECRETARY/COMMISSIONER AND SECRETARY TO THE  
GOVT. OF ASSAM AND 6 ORS.  
DEPTT. OF POWER (ELECTRIC)  
DISPUR  
GUWAHATI-781006

2:ASSAM POWER DISTRIBUTION COMPANY LTD. (APDCL)  
REP. BY CHAIRMAN  
BIJULEE BHAWAN  
PALTAN BAZAR  
GUWAHATI-781001

3:THE MANGING DIRECTOR  
ASSAM POWER DISTRIBUTION COMPANY LTD. (APDCL)  
BIJULEE BHAWAN  
PALTAN BAZAR  
GUWAHATI-781001

4:THE CHIEF GENERAL MANAGER (HRA)  
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PALTAN BAZAR  
GUWAHATI-781001

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NAGAON-782001

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NAGAON-782001

7:THE CHIEF ELECTRICAL INSPECTOR/ ELECTRICAL INSPECTORS  
ASSAM INSPECTORATE OF ELECTRICITY  
WEST END BLOCK 1ST FLOOR  
HOUSEFED COMPLEX  
DISPUR  
GUWAHATI  
PIN-781006

Linked Case : WP(C)/4414/2019

JANNATUL FERDUS AND ANR.  
W/O LT. RAFIKUL ISLAM @ RAFIQUUL ISLAM  
R/O VILL. UTTAR KHATOBAL  
P.S. RUPAHIHAT  
SUB-DIVN. -NAGAON  
DIST. NAGAON  
ASSAM  
PIN-782125

2: MAYJAN NESSA  
MOTHER OF LT. RAFIKUL ISLAM @ RAFIQUUL ISLAM  
R/O VILL. UTTAR KHATOBAL  
P.S. RUPAHI  
SUB DIVN. NAGAON  
DIST. NAGAON  
ASSAM  
PIN-782124  
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GUWAHATI-781006

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GUWAHATI-781001

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ASSAM POWER DISTRIBUTION COMPANY LTD. (APDCL)  
BIJULEE BHAWAN

PALTAN BAZAR  
GUWAHATI-781001

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DISPUR  
GUWAHATI  
PIN-781006

Advocate for the Petitioners : Mr. G. Uddin, Advocate

Advocate for the Respondents : Mr. K. P. Pathak, SC, APDCL

**BEFORE**

**HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date of Hearing : 13.11.2024

Date of Judgment : 13.11.2024

**JUDGMENT AND ORDER (ORAL)**

Heard Mr. G. Uddin, the learned counsel appearing on behalf of the petitioners. Mr. K. P. Pathak, the learned Standing

Counsel appears on behalf of the APDCL and Ms. S. Baruah, the learned counsel appears on behalf of the State of Assam.

2. The instant batch of writ petitions have been filed challenging the Office Memorandum dated 25.09.2017 whereby the Assam Power Distribution Corporation Limited (for short, 'APDCL') had fixed a uniform rate of Rs.2,50,000/- as compensation to be payable to the next of the kin of the victims who died due to an electrical accident irrespective of the age of the victim. The petitioners herein who have admittedly accepted the amount of Rs.2,50,000/- have sought for enhancement of the said compensation amount to Rs.50 lakhs each against the victims who expired.

3. The facts leading to the filing of the instant writ petitions are that on 21.09.2018, six persons expired due to electrocution. The allegation is that the lineman appointed by the APDCL authorities had wrongly informed these victims that he had cut the electrical line and asked them to go ahead with the fishing. In that regard, an FIR was filed on 21.09.2018 and a case being Rupahihat P.S. Case No.596/2018 was registered under Sections 338/304 of the Indian Penal Code. It is further seen from the materials on record that in terms of the Office Memorandum dated 25.09.2017, the APDCL Authorities had paid an amount of Rs.2,50,000/- to each of the petitioners who are the legal

representatives of the six victims who expired. The claim of the petitioners is that the loss which has been felt on account of the death of the victims upon the petitioners is far more than the compensation so awarded by the APDCL Authorities. It is under such circumstances, the Office Memorandum dated 25.09.2017 has been put to challenge and further has sought for appropriate writ, direction and order for enhancement of the compensation to the tune of Rs.50 lakhs each.

4. Pursuant to the filing of the writ petitions, affidavits have been filed by the APDCL Authorities wherein it has been mentioned that the victims were negligent in venturing into the pond for fishing when there was a wire lying/floating over the pond. It was further mentioned that the petitioners in the batch of writ petitions have duly accepted the amount of Rs.2,50,000/- without any protest/complaint, and as such, the petitioners are now estopped from raising any further demand. In addition to that, it has also been mentioned that the Office Memorandum dated 25.09.2017 was issued by taking into consideration the various factors. Further to that, it has been mentioned that there is no material which can suggest that the petitioners herein would be entitled to higher compensation in as much as there is nothing to show as regards to the professional income of the victims on the basis of which any additional compensation can be

determined,

5. In the backdrop of the above, let this Court now take into consideration the submissions made by the learned counsels appearing on behalf of the parties.

6. Mr. G. Uddin, the learned counsel appearing on behalf of the petitioners submits that the amount of Rs.2,50,000/- each which has been awarded to the petitioners on account of the death of the victims was totally disproportionate to the loss sustained by the petitioners. He further submitted that there was gross negligence on the part of the respondent authorities in as much as had the lineman not informed the victims that the electrical line was cut and they could go for fishing, they would not have ventured to the ponds. He therefore submitted that this is a case where a Constitutional tort has been committed, and as such, the petitioners are entitled to a higher compensation as has been claimed in the writ petitions. In that regard the learned counsel for the petitioners referred to the judgments of the Supreme Court in the case of ***Raman vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Others***, reported in ***(2014) 15 SCC 1*** as well as ***Nilabati Behera vs State of Orissa and Others***, reported in ***(1993) 2 SCC 746*** wherein in exercise of powers under Article 226 of the Constitution, the Courts have granted compensation on account of Constitutional torts.

7. Per contra, Mr. K. P. Pathak, the learned Standing Counsel appearing on behalf of the APDCL submitted that the Office Memorandum dated 25.09.2017 was made as an ex-gratia to be paid to the next of the kin of those victims who expired due to an electrical accident irrespective of the age of the victims. He submitted that the petitioners herein have duly accepted the amount of Rs.2,50,000/- without any protest, and as such, are estopped now to claim any further amount by filing of the writ petitions. In addition to that, the learned Standing Counsel for the APDCL further submitted that the claim made for an enhancement of the compensation has to be based upon materials and evidence which have to be lead. Nothing to that effect has been brought before this Court which would suggest that the petitioners herein would be entitled to any further compensation other than what have been already paid on the basis of the Office Memorandum dated 25.09.2017. He further submitted that as to whether there was any fault on the part of the APDCL are questions of facts which cannot be adjudicated in the instant proceedings. Replying to the judgments placed reliance by the learned counsel for the petitioners, Mr. K. P. Pathak, the learned Standing Counsel for the APDCL submitted that the said judgments could not be applied in the facts of the instant case. Firstly, for the reason that those judgments do not

deal with cases where the next of the kin of the victims have already received compensation without protest. In addition to that, the learned Standing Counsel for the APDCL further submitted that there is no material on record which would show that there has been any negligence on the part of the APDCL Authorities which was otherwise the case in the judgments so referred to by the learned counsel appearing on behalf of the petitioners.

8. Upon hearing the learned counsels for the parties, this Court put a specific query upon Mr. K. P. Pathak, the learned Standing Counsel for the APDCL as to whether in view of the Office Memorandum dated 25.09.2017, the petitioners are precluded from claiming further compensation, if they are otherwise entitled as per law. The learned Standing Counsel for the APDCL submitted that the Office Memorandum dated 25.09.2017 is a form of an immediate compensation so paid to redress the next of the kin of the victims, and as such, the next of the kin of the victims are not precluded from claiming further compensation if it is otherwise permissible under law. The learned Standing Counsel for the APDCL further submitted that pursuant to the Office Memorandum dated 25.09.2017, the Assam Electricity Regulatory Commission (Compensation to Victims of Electrical Accidents) Regulations, 2019 (for short, 'Regulation, 2019') has

also framed compensation and submits that in that Regulation and more particularly Regulation No.9, it is categorically mentioned that the compensation which is to be paid under Regulation 5 of the Regulation, 2019 shall not preclude the next of the kin of the victims to claim further damages if they are otherwise entitled as per law.

9. This Court having perused the materials on record and having heard the learned counsels for the parties has given an anxious consideration to the subject matter of the dispute involved in the instant proceedings. The Office Memorandum dated 25.09.2017 as stated by the learned Standing Counsel for the APDCL is only an ex-gratia payment when the payment is to be made to the next of the kin of the victim who died due to an electrical accident and in that regard a compensation of Rs.2,50,000/- is to be paid irrespective of the age of the victim. The same being an ex-gratia payment, cannot preclude the next of the kin of the victims who die in an electrical accident to claim further compensation subject to the evidence led that the next of the kin of the victims are entitled to a much higher compensation.

10. Taking into account that the Office Memorandum dated 25.09.2017 only relates to an ex-gratia payment and the same does not preclude the next of the kin of the victims to claim

further compensation, the question of setting aside the Office Memorandum dated 25.09.2017 does not arise.

11. The next question which arises before this Court is as to whether the petitioners in the instant proceedings can claim enhanced compensation as sought for in the writ petitions. It is the opinion of this Court that the petitioners have to prove by way of evidence that there has been a negligence on the part of the APDCL Authorities. In addition to that, the next of the kin of the victims have also to prove by way of evidence that the compensation so awarded on the basis of the Office Memorandum dated 25.09.2017 is not sufficient, and therefore, they are entitled to higher compensation. However, it is very pertinent to mention that to adjudge the question of negligence as well as the question of the inadequacy of the compensation cannot be decided in the instant proceedings under Article 226 of the Constitution as it would require evidence to be led in so far as the negligence on the part of the APDCL as well as also as regards the inadequacy of the compensation. The materials before this Court as has been placed by the petitioners are insufficient to adjudge such aspects. Moreso, the materials on record do not show that there is any admission on the part of the APDCL accepting their negligence.

12. Accordingly, it is the opinion of this Court that in the instant

cases, the question of granting any enhanced compensation to the petitioners do not arise. However, this Court is of the opinion that the petitioners herein would be at liberty to claim compensation by filing suits before the competent Court of Civil jurisdiction claiming higher compensation.

13. Accordingly, the instant batch of writ petitions are disposed of with the following observations and directions:-

- (i) The Office Memorandum dated 25.09.2017 does not call for any interference.
- (ii) The petitioners herein cannot be granted any compensation in as much as the question of negligence as well as inadequacy of compensation can only be decided by way of a proceedings wherein factual determination on the basis of evidence can be made.
- (iii) The petitioners herein are given the liberty to approach the appropriate Civil Court claiming compensation from the APDCL Authorities. The receipt of the amount of Rs.2,50,000/- as ex-gratia would not prejudice the petitioners in such proceedings.
- (iv) The observations made herein above shall not affect the rights of the petitioners to claim compensation from the APDCL Authorities.

(v) The period from the date of filing of the instant writ petitions w.e.f. 17.06.2019 till date be excluded while computing the period of limitation.

**JUDGE**

**Comparing Assistant**