

GAHC010165042022



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

Case No. : WP(C)/5503/2022

ASMA KHATUN
W/O- KADER ALI SHEIKH
VILL- PIAJBARI PART-I,
P.O- MAKHRIJHORA,
P.S- GAURIPUR,
DIST- DHUBRI, ASSAM, PIN-783349

VERSUS

THE UNION OF INDIA AND 7 ORS
MINISTRY OF HOME AFFAIRS (DISASTER MANAGEMENT DIVISION) REP.
BY ITS SECRETARY C-WING, 3RD FLOOR, NDCC, JAI SINGH ROAD, NEW
DELHI-110000

2:THE STATE OF ASSAM
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI- 06.

3:THE COMMISSIONER AND SECRETARY V
TO THE GOVT. OF ASSAM
REVENUE (RELIEF AND REHABILITATION) AND DISASTER
MANAGEMENT DEPARTMENT (GENERAL)
DISPUR
GUWAHATI- 06.

4:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI- 06.

5:THE DEPUTY COMMISSIONER
DHUBRI
ASSAM
DIST.- DHUBRI
ASSAM
PIN- 783301.

6:THE CIRCLE OFFICER
ATHANI REVENUE CIRCLE

P.O.- BAGRIBARI

P.S- GAURIPUR
DIST.- DHUBRI
ASSAM
PIN- 783349

7:THE SUPERINTENDENT OF POLICE
DHUBRI
ASSAM

P.O.
P.S. AND DIST.- DHUBRI
ASSAM
PIN- 783301.

8:THE OFFICER-IN-CHARGE
GAURIPUR POLICE STATION

P.O.- GAURIPUR
DIST.- DHUBRI
ASSAM
PIN- 783331

Advocate for the Petitioner : MR. M HUSSAIN

Advocate for the Respondent : ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Judgment & Order(Oral)

Date : 12.06.2024

Heard Mr. M. Hussain, learned counsel for the petitioner. Also heard Mr. S. S. Roy, learned CGC appearing for the respondent no. 1 and Mr. P. Saikia, learned Government Advocate appearing for the respondents no. 2, 5, 6, 7 & 8; Ms. N. Bordoloi, learned Standing Counsel appearing for the Revenue(R & R) & Disaster Management Department representing the respondent no. 3 as well as Mr. A. Chaliha, learned Standing Counsel for the Finance Department representing the respondent no. 4.

2. The petitioner, by way of instituting the present proceeding has sought for a direction upon the respondent authorities to authorize to her financial assistance/ex-gratia/compensation in terms of the notifications dated 27.07.2011 issued by the Revenue & Disaster Management (General) Department, Govt. of Assam, 08.04.2015 issued by the Ministry of Home Affairs (Disaster Management Division), Govt. of India and 02.05.2015 issued by the Revenue & Disaster Management (General) Department, Govt. of Assam.

3. As projected in the writ petition, the petitioner has contended that her only daughter Masuma Khatun on 21.07.2020, while playing at home had accidentally fallen down in the flood water resulting in her death. The said incident was reported to the police by one Iman Ali, Uncle of the deceased

Masuma Khatun by way of lodging an FIR on 22.07.2020 in the Athani Police out post.

4. A perusal of the said FIR reveals that the daughter of the petitioner had fallen in the flood water surrounding her house and at that point of time, the petitioner was working inside the home and accordingly, a search was made for her daughter and at around 4 pm, the daughter of the petitioner was found floating nearby her home. It is to be noted that in terms of the said FIR, the deceased Masuma Khatun had accidentally fallen in the flood water at around 2.30 pm. It is contended that immediately on recovery of the body, the same was taken to the Civil Hospital, Dhubri, wherein the doctor had declared her brought death. The post-mortem report brought on record also supports the contention of the petitioner herein that the cause of death of the daughter of the petitioner is account of asphyxia as a result of antemortem wet drowning.

The police, upon conclusion of the investigation, proceeded to submit an FR in the matter on 17.05.2021, wherein it was held that the death was not on account of any foul play and the said FR was accepted by the competent Court also. The death of the daughter of the petitioner having been projected to have occasioned on account of drowning in flood water, the petitioner herein vide a representation dated 27.01.2022, approached the Deputy Commissioner, Dhubri, praying for grant of ex-gratia compensation on account of the unnatural death of her daughter Masuma Khatun. In this connection, in the said representation, the petitioner had prayed for being authorized her ex-gratia compensation @ of Rs. 4,00,000/- (Four lakhs) in terms of the policy of the Government as contained in the

notification/communications dated 27.07.2011, 08.04.2015 and 02.05.2015, issued by both the Union and State Government. The said compensation as claimed not been authorized to the petitioner herein, she has instituted the present proceeding praying for a direction upon the respondent authorities for authorizing to her financial assistance/ex-gratia/compensation in terms of the policies formulated by the Union and State Governments and notified vide the notifications dated 27.07.2011, 08.04.2015 and 02.05.2015.

5. The respondents no. 5 & 7 have filed their respective affidavit in the matter. The petitioner has also filed rejoinders thereto.

6. In the affidavit-in-opposition filed by the respondent no. 5 i.e. the Deputy Commissioner, Dhubri, it is contended that the incident leading to the death of deceased Masuma Khatun i.e. the drowning incident occasioning on 21.07.2020 had so occasioned in a private place (patta land) and not in a public place as per the report submitted in the matter by the Circle Officer, Athani and the In-charge, Athani Police out post. It was further held that the said death was not on account of flood water and accordingly, it was contended that the petitioner herein is not entitled to be authorized any financial assistance on account of the accidental death by drowning occasioning in respect of her daughter.

7. The respondent no. 5 had in this connection, relied upon the report of the Addl. Deputy Commissioner-cum-CEO DDMA, Dhubri, wherein, in respect of the death of the daughter of the petitioner, it was held that the

case is accidental but not due to the flood. The said position was disputed by the petitioner herein and it was stated that the death as occasioning to her daughter had so occasioned in a public place inasmuch as the area was flooded by River Tipkai flowing by the side of their house.

8. I have heard the learned counsel appearing for the parties and also perused the materials brought on record.

9. The State Government in the Revenue and Disaster Management has issued the Notification bearing no. RGR.386/2010/22 dated 27.07.2011 providing guidelines on the subject - "Constitution and Administration of the State Disaster Response Fund [SDRF]". It may be stated that the State Disaster Response Fund [SDRF] has been constituted under Section 48[1] [a] of the Disaster Management Act, 2005. The guidelines in the Notification dated 27.07.2011 have been issued under Section 62 of the Disaster Management Act, 2005. As per the Notification dated 27.07.2011, a fund, State Disaster Response Fund [SDRF] is to be maintained.

9.1. By the Notification dated 08.04.2015, items and norms of assistance from the SDRF and the National Disaster Response Fund [NDRF] in the wake of identified natural disasters have been identified and laid down making them effective from 01.04.2015. Item 1[a] of the revised list of items & norms of assistance from the SDRF/NDRF has provided for an ex-gratia payment to the family of a deceased @ Rs. 4,00,000/-, subject to certification regarding cause of death from the appropriate authority.

9.2. The source of the Notification dated 27.07.2011 and the Notification dated 08.04.2015 is the Disaster Management Act, 2005.

9.3. The letter dated 02.05.2015 was issued in reference to the Notification dated 08.04.2015 of the Ministry of Home Affairs, Government of India. From the aforesaid Notifications/letters, it does not transpire as to how the petitioner is entitled for any compensation/ex-gratia in respect of the death of the victim i.e. the son of the petitioner by drowning.

10. The Disaster Management Act, 2005 has been enacted as a law on disaster management to provide requisite institutional mechanisms for drawing up and monitoring the implementation of the disaster management plans, ensuring measures by various wings of Government for prevention and mitigating effects of disasters and for undertaking a holistic, coordinated and prompt response to any disaster situation.

10.1. The definition of the term, 'Disaster' has been provided in Section 2[d] of the Disaster Management Act, 2005. As per Section 2[d], 'Disaster' means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.

10.2. To be called an incident as disaster, there are atleast three requirements, which are present as per the definition provided for 'Disaster' in Section 2[d]. As per the first requirement, the disaster has to arise either from natural causes or from man-made causes. Secondly, the disaster has to result in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment. The third requirement is that the disaster has to be of such a nature or magnitude as to be beyond coping capacity of the community of the affected area. As per Section 2[a], 'affected area' means an area or part of the country affected by a disaster.

11. To bring an incident within the definition of man-made disaster, catastrophe, mishap, calamity or grave occurrence it has to occur in an area and the same has to be of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area. An incident of accident death caused due to drowning in a river in the absence of material substantiating occurrence or presence of flood, in the considered view of this Court, cannot be brought within the definition of 'Disaster' in terms of the provisions of Section 2[d] of the Disaster Management Act, 2005.

12. In view of the statements made by the respondent no. 3 and the respondent no. 4 in the afore-stated manner, it has emerged that the case of the petitioner could not be considered for disbursal of a sum of Rs. 4,00,000/- as ex-gratia payment in terms of the Notification, dated

27.07.2011 and dated 08.04.2015.

13. In order to examine the aspect as to whether the incident of death of the minor daughter of the petitioner due to drowning in flood water would come within the ambit of the scheme formulated by the Notification dated 15.11.2014 of the Revenue & Disaster Management Department, Government of Assam, a perusal of the Notification dated 15.11.2014 is found necessary. On perusal of the said Notification dated 15.11.2014, it is noticed that the same has, inter-alia, made a provision for ex-gratia grants to the Next of Kin [NoK] of person killed due to accident in public place or in public carrier [other than killed by extremist/terrorist, miscreants and due to firing of security forces] and such relief has been quantified at Rs. 2,00,000/- for each deceased person in respect of accident which had occurred in the State on or after the date of the Notification i.e. 15.11.2014. It has been brought to the notice of the Court by the learned counsel for the parties that due to certain ambiguity with regard to the term, 'public place', another Notification bearing no. R.R.94/2003/288 dated 15.10.2014 came to be issued by the Revenue & Disaster Management Department, Government of Assam for removal of the ambiguity. As per the Notification dated 15.10.2014 [supra], the word 'public place' will mean any street, alley, park, public building, any place of business or assembly open to or frequented by the public or any other place, which is open to the public view or to which public has access.

14. In the present case, considering the contentions made in the matter by the Deputy Commissioner, Dhubri in his affidavit that the death of the

minor daughter of the petitioner had occasioned at a private place (patta land) and not public place, it is not clear as to whether the case of the petitioner is covered by the provisions of the notification dated 15.11.2014. There being a categorical denial by the State respondents of the projection made by the petitioner that the death of the minor daughter of the petitioner had occasioned in a public place and, the same not having been demonstrated by the petitioner herein to be erroneous, and further, the reports as relied upon by the Deputy Commissioner, Dhubri, in his report having also brought on record the fact that the death of the minor daughter of the petitioner although accidental, was not on account of floods occasioning at that relevant point of time, this Court is not in a position to hold that the case of the petitioner for being authorized ex-gratia compensation on account of the death occasioning in respect of her minor daughter is covered by the provisions of the notification dated 15.11.2014.

15. Having examined the provisions of the notification dated 15.11.2014 and also having noticed the respective stand of the parties in the present proceeding, there being a dispute raised with regard to the place of death of the minor daughter of the petitioner herein, this Court is not in a position to direct the respondent authorities to consider the case of the petitioner for being authorized ex-gratia compensation in terms of the provisions of the notification dated 15.11.2014 for the unfortunate death of her minor daughter on 21.07.2020. The petitioner is reserved the liberty to institute appropriate proceedings before a Civil Court of competent jurisdiction for establishing that the death of the daughter had so occasioned on account of drowning in flood waters in a public place.

16. In view of the above position, subject to the liberty reserved to the petitioner as indicated above, the writ petition is held to be devoid of any merit and accordingly, the same stands dismissed. However, there would be no order as to costs.

JUDGE

Comparing Assistant