

GAHC010192962023



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

Case No. : WP(C)/5082/2023

MONOWARA KHATUN AND 3 ORS
W/O- LATE ABU BAKKAR SIDDIQUE ,
R/O- VILL- DIARA BAZAR (GARAMARI PART-II,
P.O- RADHAMADHAB HAT,
P.S- MANKACHAR,
DIST- SOUTH SALMARA MANKACHAR, ASSAM, PIN-783131

2: MANIRUL HOQUE
S/O- LATE ABU BAKKAR SIDDIQUE
R/O- VILL- DIARA BAZAR (GARAMARI PART-II
P.O- RADHAMADHAB HAT
P.S- MANKACHAR
DIST- SOUTH SALMARA MANKACHAR
ASSAM
PIN-783131

3: AMOLA SIDDIKA
D/O- LATE ABU BAKKAR SIDDIQUE
R/O- VILL- DIARA BAZAR (GARAMARI PART-II
P.O- RADHAMADHAB HAT
P.S- MANKACHAR
DIST- SOUTH SALMARA MANKACHAR
ASSAM
PIN-783131

4: ZIARUL HOQUE
S/O- LATE ABU BAKKAR SIDDIQUE
R/O- VILL- DIARA BAZAR (GARAMARI PART-II
P.O- RADHAMADHAB HAT
P.S- MANKACHAR
DIST- SOUTH SALMARA MANKACHAR
ASSAM
PIN-78313

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
DISPUR, GHY-06

2:THE DISTRICT COMMISSIONER
P.O- HATSINGIMARI
DIST- SOUTH SALMARA MANKACHAR
PIN-783135
ASSAM

3:THE CIRCLE OFFICER
MANKACHAR REVENUE CIRCLE
P.O- MANKACHAR
DIST- SOUTH SALMARA MANKACHAR
PIN-783131
ASSAM

4:MON CHEHERA KHATUN
W/O- LATE ABU BAKKAR SIDDIQUE
R/O- VILL- DIARA BAZAR (GARAMARI PART-II
P.O- RADHAMADHAB HAT
P.S- MANKACHAR
DIST- SOUTH SALMARA MANKACHAR
ASSAM
PIN-78313

Advocate for the Petitioner : MR. M R KHANDAKAR

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 08-02-2024

Heard Mr. M.R. Khandakar, learned counsel for the petitioners; Ms. G. Hazarika, learned Standing Counsel, Revenue & Disaster Management Department for the respondent no. 1; Mr. J. Handique, learned Junior Government Advocate, Assam for the nos. 2 & 3; and Mr. F.U. Barbhuiya, learned counsel for the respondent no. 4.

2. The petitioners have approached this Court by the present writ petition, preferred under Article 226 of the Constitution of India, aggrieved by refusal on the part of the Designated Public Servant/Officer to issue a Next of Kin [NoK] Certificate, a notified public service, in response to an application submitted by them.
3. The petitioners, 4 in nos., have stated that the petitioner no. 1 is the surviving first wife of one Abu Bakkar Siddique, who died on 22.05.2023. The petitioner no. 2 and the petitioner no. 4 are the sons of Late Abu Bakkar Siddique respectively whereas the petitioner no. 3 is the daughter of Late Abu Bakkar Siddique. The petitioners have stated that Abu Bakkar Siddique was a Grade-IV Employee [Dresser] and he retired from service on 30.04.2022 on reaching the age of superannuation from Tumni Kawahagi CHC under the Health & Family Welfare Department, Government of Assam.
- 3.1. The petitioners have stated that Abu Bakkar Siddique during his life time, first married one Momina Khatun, who died subsequently. Thereafter, Abu Bakkar Siddique married the petitioner no. 1 on 10.04.1984. Subsequently, Abu Bakkar Siddique married one Ful Begum, who also died later. After demise of Ful Begum, Abu Bakkar Siddique entered into marital relationship for the fourth time by solemnizing marriage with the respondent no. 4. Abu Bakkar Siddique had left behind 7 nos. of sons and daughters including the petitioner nos. 2, 3 & 4. The petitioners have further stated that they have, by due process, obtained a Death Certificate from the Department of Health Service, Government of Assam on 24.05.2022 and the said Death Certificate recorded the date of death of Abu Bakkar Siddique as 22.05.2022.
- 3.2. It is the case of the petitioners that on 26.07.2022, the petitioners through the petitioner no. 2 applied for a Next of Kin [NoK] Certificate before the Designated Public Servant/Officer in the office of the District Commissioner, South Salmara Mankachar District. The application was duly received by the Designated Public Servant/Officer by registering the said application vide Application no. SSDG/ED/NOK/4911630 for the notified public service : Next of Kin [NoK]

Certificate. The Designated Public Servant/Officer had thereafter, processed the application but as per the status shown in the portal on 04.05.2023, the Designated Public Servant/Officer finding the application submitted by the petitioner no. 2 unsatisfactory, decided not to issue the Next of Kin [NoK] Certificate.

4. Mr. Khandakar, learned counsel for the petitioner has submitted that the reason behind refusal to issue Next of Kin [NoK] Certificate to the petitioners was an application submitted by the respondent no. 4 before the Designated Public Servant/Officer. As the respondent no. 4 had also submitted an application for issuance of a Next of Kin [NoK] Certificate in her favour, allegedly with some false documents, the Designated Public Servant/Officer had refused to issue the Next of Kin [NoK] Certificate either to the petitioners or to the respondent no. 4. Controverting the said submissions made by the learned counsel for the petitioners, Mr. Barbhuiya, learned counsel for the respondent no. 4 has contended that the petitioner no. 1 was divorced by Abu Bakkar Siddique [since deceased] during his lifetime and as such, the petitioner no. 1 is not entitled for any Next of Kin [NoK] Certificate. The learned counsel for the parties have also raised a number of contentions, which are not required to be adverted to for the purpose of disposal of the present writ petition.
5. At this juncture, a reference to the provisions of the Assam Right to Public Services Act, 2012 [‘the ARTPS Act’, for short] is necessary. The Assam Right to Public Services Act, 2012 [‘the ARTPS Act’, for short] has been enacted by the Assam Legislative Assembly in order to provide for delivery of notified public services to the people of the State of Assam within the stipulated time limit and for matters connected therewith and incidental thereto. The ARTPS Act which received the assent of the Governor of Assam on 27.04.2012, was notified by a notification dated 02.05.2012. The ARTPS Act has been published in the Assam Gazette in its issue dated 02.05.2012.
- 5.1. The term, ‘eligible person’, defined in Section 2[d], means a citizen who is eligible for obtaining the notified service. As per Section 2[h], ‘Right to Public Service’ means right to obtain the

notified services under the ARTPS Act within the stipulated time limit, as described under Section 5. As per Section 2[i], 'notified service' means any service notified by the State Government under Section 4. Section 2[k] has provided for the 'stipulated time limit' which means the maximum time to provide the service the service by the Designated Public Servant or to decide the appeals by the appellate authorities as notified under Section 4.

- 5.2. Section 5 of the ARTPS Act has laid down that every eligible person shall have the right to obtain the services in accordance with the ARTPS Act within the time bound period as notified under Section 4. It is liability of the Government Servant to deliver services, under Section 6 of the ARTPS Act, within the stipulated period. The stipulated time limit, as per Section 7[1], starts from the date when the application for obtaining a notified service is submitted to the Designated Public Servant or to a person subordinate to him authorized to receive the application. Such application shall be duly acknowledged. As per Section 7[2], the Designated Public Servant on receipt of an application under sub-section [1] shall, within the stipulated time limit, provide the notified service or reject the application and in case of rejection of application, he shall record the reasons in writing and communicate to the person making the application - [i] the reasons for such rejection; [ii] the period within which an appeal against such rejection may be preferred; and [iii] the particulars of the Appellate Authority. Section 8 of the Act has provided for an appeal before the Appellate Authority and also for a review before the Reviewing Authority.

- 5.3. The State Legislature has made certain amendments in the provisions of 'the Assam Right to Public Services Act, 2012' by 'the Assam Right to Public Services [Amendment] Act, 2019 [Assam Act no. VII of 2019]' ['the ARTPS (Amendment) Act', for short]. The ARTPS [Amendment] Act, 2019 was notified on 04.09.2019 and was published in the Official Gazette also on 04.09.2019. In exercise of the powers conferred by Section 15 of the ARTPS Act, the State Government has also made a set of rules viz. the Assam Right to Public Services Rules, 2012 ['the ARTPS Rules', for short] vide a Notification no. AR.69/2011/Pt-II/... dated 19.09.2012 and as per Rule 1[2] thereof, the ARTPS Rules shall come into force on the date of their publication in the Official Gazette. The ARTPS Rules had come to be published in the Official Gazette, in its issue dated 25.10.2012.

- 5.4. By a Notification no. AR.69/2011/Pt-II/95 dated 10.04.2013, the State Government in exercise of powers conferred under sub-section [3] of Section 1 of the ARTPS Act has notified enforcement of the ARTPS Act w.e.f. 19.04.2013. The State Government, by the same Notification, in exercise of powers conferred under Section 4 of the ARTPS Act has declared that the ARTPS Act has come into effect to the whole State except in the districts of Kokrajhar, Chirang, Baksa, Udalguri, Karbi Anglong and Dima Hasao.
- 5.5. In exercise of the powers conferred under Section 4, the State Government may, from time to time, notify, inter-alia, the public services including the provisions for fast track service delivery ['Tatkal Sewa'], the appointment of Designated Public Servants in the administrative units/offices under it, Appellate Authorities to hear and decide the appeal by an eligible person against rejection of his application or delay in providing notified public services within the stipulated time limit, etc.
- 5.6. It has been made mandatory under Rule 3 of the ARTPS Rules to issue acknowledgment to the citizens applying for notified services. The State Government by a Notification no. AR.32/2020/PT-I/28 dated 10.06.2021 has further made it mandatory to issue acknowledgement against each such application for notified service in order to track the delivery of notified services and to see as to whether the notified services have been delivered within the stipulated time period.
- 5.7. The Designated Public Servant on receipt of an application to provide a notified service shall either provide the notified service or reject the application and in case of rejection of an application, he shall have to record the reasons in writing and communicate to the person making the application [i] the reasons for such rejection; [ii] the period within which an appeal against such rejection may be preferred; and [iii] the particulars of the Appellate Authority.
- 5.8. Section 8 has made provisions for appeals as well as for second appeal before an Appellate Authority and the Assam State Commission for Right to Public Services ['the Commission', for

short] respectively, within the time limits provided therefor. Under Section 8A, the State Government is required to constitute a body to be known as the Assam State Commission for Right to Public Services, by notification in the Official Gazette, to exercise the powers conferred on, and to perform the functions assigned to it under the ARTPS Act. The powers and functions of the Commission have been outlined in sub-section [1] of Section 8D of the Act with the mandate that it shall be the duty of the Commission to ensure proper implementation of the ARTPS Act and to make suggestions to the State Government for ensuring better delivery of services. For the said purpose, the Commission may [a] entertain and dispose of appeal under Section 8; [b] recommend Departmental action against any officer or employee of the State Government who has failed in due discharge of functions cast on him under the ARTPS Act; [c] recommend changes in procedures for transparent and easier delivery : provided that before making such a recommendation, the Commission shall consult the Authority of the concerned Administrative Department which is to deliver the services; and [d] recommend steps to be taken by Public Authority for efficient delivery of Public Services. Sub-section [2] of Section 8D has conferred power to the Commission to frame regulations, subject to the previous approval of the State Government, consistent with the provisions of the ARTPS Act and the ARTPS Rules, for regulating its own procedure and disposal of its business with sub-section [3] thereof contains the mandate to publish such regulations in the Official Gazette.

- 5.9. By a notification no. AR.39/2017/149 dated 04.03.2020 of the Administrative Reforms and Training Department, Government of Assam, it has been notified that the Assam Administrative Tribunal shall exercise the powers and perform the functions of the Assam State Commission for Right to Public Services until further order and the said notification has come into force with immediate effect.
- 5.10. The State Government in exercise of the powers conferred by sub-section [2] of Section 8D of the ARTPS Act has also made a set of regulations by the name of 'the Assam State Commission for Right to Public Services Regulations, 2021 ['the ARTPS Regulations', for short] for regulating the procedure and disposal of business of the Commission and the ARTPS Regulations have been notified by the State Government vide a notification no. AR.21/2021/31 dated 12.11.2021.

- 5.11. Section 9 has prescribed for penalty at the rate specified from time to time as prescribed in the rules framed under the ARTPS Act if the Designated Public Servant has refused to receive an application for notified services or has failed to provide the notified public services within the stipulated time period as fixed under the ARTPS Act or malafidely denied the request for notified services or obstructed in any manner in providing the notified services without sufficient and reasonable cause. Provision is also made therein for imposition of penalty up to a maximum of Rs. 25,000/-. Section 10 has laid down the procedure for recovery of penalty, making provision for recovery of penalty from the salary of the concerned Designated Public Servant.
- 5.12. Section 14 of the ARTPS Act has given overriding effect to the ARTPS Act. As per the said section, in relation to the notified services under the ARTPS Act and its implementation, the provisions of the ARTPS Act shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or in any instrument having effect by virtue of any law other than the said ARTPS Act.
6. The State Government in exercise of the powers conferred under Section 4 of the ARTPS Act, notified and brought a number of services under the purview of the ARTPS Act. Issuance of Next of Kin [NoK] Certificate is one of the notified services under the ARTPS Act, 2012. As per the Notification bearing no. GAG[A].356-2017-336 dated 02.08.2019, the following are the Designated Public Servant, Appellate Authorities and Reviewing Authorities :-

Designated Public Servant	: To be notified by the concerned Deputy Commissioner as per Section 3[c] of the ARTPS Act, 2012.
Appellate Authorities	: Deputy Commissioners of the Districts.
Reviewing Authorities	: Divisional Commissioners of the area.

7. It is a settled position of law that when there is an alternative and equally efficacious statutory remedy available for relief the exercise of jurisdiction under Article 226 of the Constitution of India which jurisdiction is discretionary and extra-ordinary in nature ordinarily not to be exercised by bypassing the machinery created under the statute for the same remedy. In this connection, following observations made by the Constitution Bench of the Hon'ble Supreme Court of India in **Thansing Nathmal and others vs. Superintendent of Taxes, Dhubri and others**, reported in **AIR 1964 SC 1419**, can be referred to : -

7. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.

8. Thus, it is well settled proposition that when an alternative and equally efficacious statutory remedy is open to a litigant, he should be required to pursue only that remedy and not to invoke the extra-ordinary and discretionary jurisdiction of the High Court to issue prerogative writ though it is true that existence of statutory remedy does not effect that jurisdiction of the High to issue a

writ. It is trite to say that when the disputed questions of facts are involved, a writ proceeding is not the proper remedy as disputed questions of fact are required to be determined by fact finding authority. In the case in hand, a number of disputed questions would fall for consideration.

9. It is noticed that subsequent to the order/remark recorded by the Officer/Designated Public Servant on 04.05.2023 refusing to issue the Next of Kin [NoK] Certificate to the petitioners, the petitioners preferred an application before the District Commissioner, South Salmara – Mankachar Hatsingimari on 27.06.2023 and the receipt of the said application was duly acknowledged under signature and seal of the office of the District Commission, South Salmara – Mankachar at Hatsingimari. The proviso to sub-section [1] of Section 8 of the ARTPS Act, 2012 has made a provision that the Appellate Authority may admit the appeal after the expiry of the normal limitation period of 30 days, but in no case beyond 60 days from the date of rejection of application or the expiry of the stipulated time period for delivery of that particular notified service, if he is satisfied that the petitioner was prevented by sufficient cause from filing the appeal in time. In the case of a notified public service, 'Issuance of Next of Kin Certificate', the jurisdictional District Commissioner is the Appellate Authority. As the application submitted by the petitioner on 27.06.2023 is found to be within the period of 60 days [= normal limitation period of 30 days + extended period of limitation of 30 days], the jurisdictional District Commissioner, that is, the District Commissioner, South Salmara – Mankachar shall treat and accept the said application dated 27.06.2023 as an appeal under Section 8 of the ARTPS Act and after considering the matter of limitation on sufficient cause being shown by the petitioners, shall proceed to dispose of the appeal as laid down in the manner prescribed by the provisions of the ARTPS Act, the ARTPS Rules and the ARTPS Regulations. The petitioners shall submit a certified copy of this order at the office of the respondent no. 2 within a period of 15 days from today. Liberty is also granted to the petitioners to submit an additional application indicating the reasons which prevented them to file the appeal within the normal limitation period of 30 days. On receipt of such an application, the jurisdiction District Commissioner as the Appellate Authority shall consider the same on merits. It is accordingly ordered.
10. It is further observed that while deciding the appeal, both the petitioners' side and the respondent no. 4 side shall be afforded opportunities of hearing by the Appellate Authority, if found necessary and mandated. If the petitioners feel aggrieved by the appellate order to be

passed by the Appellate Authority, they would be at liberty to avail appropriate remedy, as available under the ARTPS Act, the ARTPS Rules and the ARTPS Regulations.

11. With the observations made and the directions given above, the writ petition is disposed of. No cost.

JUDGE

Comparing Assistant