

GAHC010201182019



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

Case No. : WP(C)/6444/2019

GAJENDRA MISHRA AND ANR.
S/O- LATE RAJENDRA MISHRA, RESIDENT OF VILLAGE BAGISADUBI NO.
1, PO- KHERONI, PS- KHERONI, PIN- 782448, DIST- WEST KARBI ANGLONG,
ASSAM.

2: SMT. GEETA DEVI
W/O- GAJENDRA MISHRA
RESIDENT OF VILLAGE BAGISADUBI NO. 1
PO- KHERONI
PS- KHERONI
PIN- 782448
DIST- WEST KARBI ANGLONG
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, DEPARTMENT OF FORESTS, DISPUR, PIN-
781006 DIST.- KAMRUP(M), ASSAM.

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST
WILDLIFE AND CHIEF WILDLIFE WARDEN
ASSAM
BASISTHA
GUWAHATI
PIN- 781029
DIST.- KAMRUP(M)
ASSAM.

3:THE SPECIAL CHIEF CONSERVATOR OF FORESTS

KARBI ANGLONG AUTONOMOUS COUNCIL
DIPHU

PO AND PS- DIPHU
PIN- 782640
DIST- KARBI ANGLONG
ASSAM.

4:THE DIVISIONAL FOREST OFFICER
HAMREN DIVISION
WEST KARBI ANGLONG
PO AND PS- HAMREN
PIN- 782486
DIST- WEST KARBI ANGLONG
ASSAM .

5:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
FINANCE DEPARTMENT
DISPUR
PIN- 781006
DIST.- KAMRUP(M)
ASSAM

Advocate for the Petitioner : MR. R BORA, MR. D BORAH,MR. R DOWARAH

Advocate for the Respondent : SC, FOREST, SC, KARBI ANGLONG,SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 12.08.2024

Heard Mr. R. Bora, learned counsel for the petitioner. Also heard Ms. S. Kemprai, learned Standing counsel, Karbi Anglong Autonomous Council (KAAC) appearing for the respondent No.4 and Ms. S. Baruah, learned Government Advocate appearing for the respondent.

2. This writ petition under Article 226 of the Constitution of India has been filed seeking a direction to the respondent authorities in the Environment and Forest Department, Government of Assam to grant the ex-gratia amount for death of the son of the petitioner caused due to attack by a herd of wild elephants in terms of the Notification dated 06.03.2017 of the Environment and Forest Department, Government of Assam.

3. The petitioners in the writ petition has projected that on 11.03.2016, at around 5.30 a.m., a herd of wild elephants had entered into their village and destroyed a few number of houses and after a while, the herd of wild elephant had left the village. The son of the petitioner, Sri Parmeshwar Mishra and their grandson namely, Santanu Mishra aged 24 years and 4 years had gone at that relevant point of time to their sugarcane field and while returning from the said sugarcane field, a wild elephant attacked their son and grandson and as a result of which, they sustained serious injuries. The son of the petitioner, Sri Parmeshwar Mishra, succumbed to injuries, so received on his body on the same day i.e. 11.03.2016. Basing on the said incident, an FIR was lodged by the petitioner No.1 herein before the Officer In-Charge, Kheroni Police Station. The police on receipt of the said FIR, raised an unnatural death case being numbered as UD Case No.03/2016. The petitioner No.1 also submitted a representation in the matter before the Divisional Forest Officer, Hamren Division, West Karbi Anglong, praying for initiation of appropriate steps for sanction of the prescribed ex-gratia amount to the petitioner herein. The ex-gratia due to the petitioner not being released, his case came to be included in a list prepared by the Divisional Forest Officer, Hamren Division, West Karbi Anglong on 21.02.2018 for forwarding to the Special Principal Chief Conservator of Forest, Karbi Anglong Autonomous Council, Diphu. The said list as prepared in the matter on 21.02.2018 was subsequently forwarded to the Special Principal Chief Conservator of Forest, Wildlife and Chief Wildlife Warden, Assam.

4. The injuries as sustained by the grandson required treatment at the GMC&H, Guwahati. The grandson was authorized an ex-gratia amount for the injuries sustained by him and in this connection an amount of Rs.30,000/- (Rupees thirty thousand) only authorized to him for the medical expenses involved. On 17.08.2018, the concerned authorities authorized to the petitioner herein an amount of Rs.1,00,000/- (Rupees one lakh) only as compensation/ex-gratia payment on account of the death occasioning to their son late Parmeshwar Mishra on account of injuries sustained on being attacked by wild elephant.

5. The petitioner's son had expired on 11.03.2016 and at the relevant point of time, the quantum of ex-gratia/compensation to be so paid was governed by the notification dated 06.03.2010 and therein the ex-gratia payable for loss of human life on account of attack by wildlife animal was prescribed as

Rs.1,00,000/- (Rupees one lakh) only. During the period, when the application of the petitioner herein was under process, for release of ex-gratia payment, on account of the death occasioning to their son late Parmeshwar Mishra, the Govt. of Assam in the Environment & Forest Department vide notification dated 06.03.2017 revised the ex-gratia/compensation payable for loss of human life to Rs. 4,00,000/- (Rupees four lakh) only from the earlier prescribed quantum of Rs.1,00,000/- (Rupees one lakh). The said revised rate was stated in the said notification to be so effective from 24.05.2016.

6. The petitioner had approached the authorities praying for authorizing to them the compensation in the matter at the revised rate coming into effect in terms of the said notification dated 06.03.2017. However, the same not being so considered, the petitioner has approached this Court by way of instituting the instant writ petition praying for being authorized the compensation involved in terms of the notification dated 06.03.2017.

7. The State respondents have filed an affidavit-in-opposition stating inter alia that a proposal for payment of an ex-gratia amount of Rs. 1,00,000/- to the victim's family was forwarded to the higher authority on 14.05.2015, in terms of the Government Notification dated 06.03.2010, and subsequently, an amount of Rs. 1,00,000/- was sanctioned as ex-gratia grant in favour of the petitioner on 16.01.2018. It is the stand of the respondents that as the death of the son of the petitioner due to attack by wild elephants, had occurred on 11.03.2016 the amount of ex-gratia grant is to be decided on the basis of the then extant policy in force as on that date.

8. Learned counsel for the petitioner has submitted that though the death of the son of the petitioner occurred on 11.03.2016, there was unreasonable delay on the part of the respondent authorities in releasing the ex-gratia amount to the petitioner and the policy formulated by the State Government itself indicates that the relief in the form of ex-gratia grant should be immediate and there should not be any delay in payment of the same.

9. I have heard the learned counsel for the parties and also perused the materials on records.

10. For the grant of ex-gratia amount to the victims of incidents caused by wild animals, etc. are concerned, the State Government has framed a set of guidelines indicating different amounts under different heads. The guidelines have been revised from time to time. It transpires that in the year 2010,

the earlier guidelines were revised by a Notification dated 06.03.2010, wherein the amount of ex-gratia grant for loss of a human life was revised to Rs. 1,00,000/- from earlier Rs. 40,000/-. By a Notification dated 06.03.2017, the State Government had further revised the earlier guidelines of 2010 with enhancement of the amounts of ex-gratia grant for loss of a human life from Rs. 1,00,000/- to Rs. 4,00,000/-. Similarly, there have been upward revisions in respect of the amounts of ex-gratia grant for other heads like loss of limb, damages to crops, houses, etc.

11. Thus, at the time of death of the son of the petitioner on 11.03.2016, the Notification dated 06.03.2010 was in force. A perusal of the materials available on record would go to reveal that after the death of the son of the petitioner herein on 11.03.2016, the respondent authority were processing the matter and only on 03.07.2018, a list of persons eligible to receive compensation on account of death occasioning to their relatives came to be forwarded by the Special Principal Chief Conservator of Forest, Karbi Anglong, Diphu to the Office of the Principal Chief Conservator of Forest, Assam and therein the name of the petitioner No.1 herein was reflected at Serial No.1. The ex-gratia amount due to the petitioner was so released to the petitioner herein only on 17.08.2019. Accordingly, it is seen that the processing and the authorization of the compensation to the petitioner No.1 herein had so occasioned after issuance of the said notification dated 06.03.2017.

12. From the facts emerged in respect of the case in hand, it is evident that by the time the final disbursement of Rs. 1,00,000/- was made to the petitioner, the State Government had revised the guidelines relating to amounts for ex-gratia grant for loss of a human life, loss of limb, loss of livestock, damage to crops, houses, etc. caused by wild animals vide the Notification dated 06.03.2017, whereby, in so far as, the amount of ex-gratia grant for the death of a human on account of attack by wild animals was concerned, the same was enhanced to Rs. 4,00,000/- (Rupees four lakh) per deceased person.

13. Reliance has been placed in the decision of this Court in *Dalimi Rongpi vs. State of Assam and others* reported in 2014 (3) NEJ (Gau) 225, wherein, in a similar situation, a direction was made to pay the ex-gratia amount in terms of the notification which was in force at the time of final disbursement of the ex-gratia amount. In *Dalimi Rongpi* (supra), the husband of the petitioner therein died on

27.04.2007 and for about 7 years, nothing was paid to the petitioner therein. At the time of death of the deceased therein, the amount of exgratia grant as per the then extant Government notification was Rs. 40,000/- The said amount of ex-gratia grant stood enhanced to Rs. 1,00,000/- by a subsequent Notification dated 06.03.2010. When the writ petition, W.P.(C) no. 4256/2007, came up for consideration on 10.06.2014, this Court directed the State respondents to pay the ex-gratia amount in terms of the Notification dated 06.03.2010. It was also observed that the victims of wild animals must be compensated promptly without delay and because of inaction on the part of the State respondents, the victim's family was constrained to move the Court to get their legitimate dues. Since the disbursal was not made in due time, the Court held that the respondent should pay the amount of Rs. 1,00,000/- in terms of the Notification dated 06.03.2010.

14. In the case at hand also, it is discernible from the materials available on record that there as inordinate inexplicable delay on the part of the State respondents in disbursing of the ex-gratia amount in connection with the death of the son of the petitioner. The processing in the matter as noted hereinabove was done in the year 2018 only. The Notification dated 06.03.2017, mentions that the revised rates had come into force w.e.f. 24.05.2016. It is noticed that by the Notification dated 06.03.2010, the State Government enhanced the ex-gratia amount for loss of a human life from earlier Rs. 40,000/- to Rs. 1,00,000/- and by the subsequent Notification dated 06.03.2017, the said amount was enhanced from Rs. 1,00,000/- to Rs. 4,00,000/- w.e.f. 24.05.2016. From such periodical enhancements in the ex-gratia amounts it is clearly discernible that the State Government had itself felt that due to various factors including the changes in the cost of living index, the rates of inflations, etc., there was need for periodical upward revision in the ex-gratia amounts so prescribed after taking into account of the relevant factors. What was reasonable amount of ex-gratia at a particular point of time might not be reasonable at a subsequent point of time. The State Government as a policy decision has formulated the guidelines providing for exgratia amount for different hazards faced by the victims of attacks by wild animals and it cannot be denied that disbursal of such ex-gratia grant should be prompt to enable the victims and/or the victims' families to overcome the sudden loss and to deal with the untoward situation which have befallen on them suddenly due to attacks by wild animals which are always unanticipated. In the event the disbursal of the ex-gratia amount is not made immediately and there is delay in disbursal of the same then it is incumbent on the part of the State respondents to offset the situation for the victims and/or the victims' families by disbursal of the amount of ex-gratia grant prevailing on the date of such disbursal.

15. In the above fact situation obtaining in the case and in the light of the above discussion, this Court holds that the petitioner is entitled to get the ex-gratia amount in terms of the Notification dated 06.03.2017. It is, therefore, directed that the respondents shall take necessary action to ensure the disbursal of the balance amount of ex-gratia amount due to petitioner on account of death of her son, upon her due identification, in terms of the Notification dated 06.03.2017, within a period of 3 (three) months from the date of receipt of a certified copy of this order. If the amount is not paid within the said period, the balance amount of Rs.3,00,000/- (Rupees three lakh only) due, shall carry interest at the rate of 6% per annum w.e.f. the date of death of the deceased i.e. 11.03.2016 till the date of disbursal of the same.

16. The writ petition stands allowed to the extent indicated above. No cost.

JUDGE

Comparing Assistant