

GAHC010229312024



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

Case No. : WP(C)/5832/2024

ALI AKBAR
S/O- TAHER ALI,
VILL- BORAR CHAR,
P.O. AND P.S.- CHUNARI,
DIST.- GOALPARA, ASSAM,
PIN- 783129.
PRESENTLY RESIDING AT-
VILL. AND P.O.- RAJMITA,
P.S.- LAKHIPUR, DIST.- GOALPARA,
ASSAM, PIN- 783129.

VERSUS

THE UNION OF INDIA AND 4 ORS
MINISTRY OF HOME AFFAIRS (DISASTER MANAGEMENT DIVISION),
REPRESENTED BY ITS DIRECTOR (DM-I),
C- WING, 3RD FLOOR, NDCC-II, JAI SINGH ROAD,
NEW DELHI- 110001.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPTT. (GEN.)
DISPUR
GHY-06.

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

4:THE DEPUTY COMMISSIONER
GOALPARA
ASSAM. PIN- 783121.

5:THE CIRCLE OFFICER

LAKHIPUR REVENUE CIRCLE
P.O. AND P.S.- LAKHIPUR
DIST.- GOALPARA
ASSAM
PIN- 783129

Advocate for the Petitioner : MR. W RAHMAN,

Advocate for the Respondent : DY.S.G.I., MS. K PHUKAN (C.G.C.),GA, ASSAM,SC, FINANCE
DEPTT.,SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 13.11.2024

Heard Mr. W. Rahman, learned counsel for the petitioner; Ms. K. Phukan, learned Central Government Counsel [CGC] for the respondent no. 1; Ms. G. Hazarika, learned Standing Counsel, Revenue & Disaster Management Department for the respondent no. 2; Mr. A. Chaliha, learned Standing Counsel, Finance Department for the respondent no. 3; and Ms. S. Konwar, learned Junior Government Advocate, Assam for the respondent nos. 4 & 5.

2. The petitioner was the husband of one Late Sokina Khatun. In this writ petition, the petitioner has based his case on the basis of a Police Report submitted by the In-Charge, Jaleswar Police Out Post, Police Station – Lakhipur, District – Goalpara [Assam] on 19.08.2024, which is annexed as Annexure-4 to this writ petition.

3. In the said Police Report, it has been reported that at about 05-00 p.m. on 26.04.2023, fire broke out suddenly in the kitchen room of the house of the petitioner where Sokina Khatun was making food for the family. In the fire, Sokina Khatun sustained burn injuries and she succumbed to the burn injuries so sustained. In the process, the kitchen was burnt completely to ashes. In connection with the said incident, an information was received at Jaleswar Police Out Post and the said information was registered as Jaleswar Police Out Post General Diary Entry no. 399/2024 dated 26.04.2023. The matter was investigated into by visiting the place of occurrence. The inquest on the deadbody of the deceased was held and

thereafter, the deadbody was sent to the Civil Hospital at Goalpara for post-mortem examination. The post-mortem examination on the deadbody of the deceased was performed at the Civil Hospital, Goalpara. In the Police Report, it was further reported that the FIR lodged at Lakhipur Police Station has been registered vide Lakhipur Police Station U.D. Case no. 07/2023. In the Post-Mortem Examination Report performed at the Civil Hospital, Goalpara, the Autopsy Doctor had opined that the death was due to shock as a result of epidermo [Sic] ante-mortem burn injuries sustained over 99% of body surface area.

4. With such projections, the petitioner has preferred this writ petition under Article 226 of the Constitution of India seeking inter alia a direction to provide gratuitous relief to the family of the petitioner in terms of a Notification dated 27.07.2011 of the Revenue and Disaster Management Department, Government of Assam. The said Notification has laid down the Guidelines for constitution and administration of State Disaster Response Fund [SDRF]. The petitioner has contended that the Guidelines has provided for gratuitous relief in the form of ex-gratia for a deceased person like his wife, Sokina Khatun and the quantum of such ex-gratia for death has been fixed at Rs. 4,00,000/-

5. 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. Thus, the source of the Notification dated 27.07.2011 is the Disaster Management Act, 2005.

6. 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.

7. 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 manmade 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.

8. To be called an incident as disaster, there are two basic requirements to be fulfilled as per the definition provided for 'Disaster' in Section 2[d]. The first requirement is that the disaster has to arise either from natural causes or from man-made causes. The second basic requirement is that the disaster has to be of such a nature or magnitude as to be beyond the 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.

9. To bring an incident within the definition of man-made disaster, catastrophe, mishap, calamity or grave occurrence 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 occurred inside the kitchen of the dwelling house of a family, in the considered view of this Court, cannot be brought within the purview of the definition of 'Disaster' provided in Section 2[d] of the Disaster Management Act, 2005.

10. This writ petition under Article 226 of the Constitution of India has been preferred by the petitioners seeking inter-alia a direction in the nature of mandamus directing the respondent authorities to pay an amount of Rs. 4,00,000/- as ex-gratia relief in respect of the death caused to Late Sokina Khatun in terms of notification dated 27.07.2011. A writ petition under Article 226 of the Constitution of India is a public law remedy and a writ petition is maintainable when a citizen of the country suffers loss due to any action attributable to the State. In the case in hand, the petitioner has not been able to show that the incident occurred inside the kitchen of the dwelling house of the petitioner is attributable in any manner to any State action or inaction. In such view of the matter, as the incident occurred

on 26.04.2023 does not come within the ambit and purview of the definition of 'Disaster', as provided in Section 2[d] of the Disaster Management Act, 2005, this writ petition is found not maintainable and accordingly, the same is dismissed.

JUDGE

Comparing Assistant