

GAHC010252582019



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

Case No. : WP(C)/7937/2019

FORHANA BEGUM LASKAR
W/O- MAHBOOB AHMED BARBHUIYA, VILL.- BILPAR DHUMKAR, P.O.-
RANGAUTI, DIST. HAILAKANDI (ASSAM).

VERSUS

THE STATE OF ASSAM AND 4 ORS.
TO BE REPRESENTED BY COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, REVENUE AND DISASTER MANAGEMENT
DEPARTMENT, DISPUR, GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM FINANCE DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
HOME DEPARTMENT DISPUR
GUWAHATI- 781006.

4:THE SUPERINTENDENT OF POLICE
HAILAKANDI
P.O.
P.S. AND DIST.- HAILAKANDI. PIN- 788151.

5:THE DEPUTY COMMISSIONER
HAILAKANDI P.O.
P.S. AND DIST.- HAILAKANDI. PIN- 788151

Advocate for the Petitioner : MR F A LASKAR

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI
ORDER

16.05.2024

Heard Mr F A Laskar, learned counsel for the petitioner. Also heard Ms G Hazarika, learned Standing Counsel, Revenue, for the respondent Nos. 1 and 2 and Mr M Chetia, learned Government Advocate, for the State Respondent Nos. 3, 4 and 5.

2. By way of the instant writ petition, the petitioner is claiming *ex-gratia* as per the Assam Disaster Management Manual, 2015, and/or Government Notification dated 06.12.2014, in relation to her husband being killed due to the firing of the Police on 10.05.2019, at Hailakandi.

3. The brief facts of the case is that the husband of the petitioner was injured severely due to the firing of the Police on 10.05.2019, at Hailakandi. While the husband of the petitioner was returning from the Bank, the Police fired, as a result three bullets have passed over the body of the husband of the petitioner, for which he has become permanently invalid. In connection with the aforesaid incident, the petitioner sought *ex-gratia* grant in terms of the applicable guidelines, by filing representations dated 21.05.2019 and 10.06.2019, however, nothing was done. As such this writ petition has been filed.

4. Mr F A Laskar, learned counsel for the petitioner submits that in terms of the Office Notification dated 06.12.2014, under Sl. No. 8, the petitioner is entitled for financial

assistance.

5. Mr M Chetia, learned Government Advocate submits that the financial assistance provided under the aforesaid notification dated 06.12.2014, is only in the event, the person who has become permanently invalid is innocent. He further draws the attention of this Court to the affidavit-in-opposition filed on behalf of the respondent No. 5, Deputy Commissioner, Hailakandi, wherein at paragraph -7, it is clearly stated that the petitioner was involved in mob activities and despite the administration's repeated requests to disperse, the same was not done. He further draws the attention of this Court to the affidavit-in-opposition filed by the respondent No. 4 (Superintendent of Police, Hailakandi), wherein in paragraph-6, it has been clearly stated that the petitioner was a member of the aggressive mob.

6. Heard the parties and perused the materials available on record.

7. In order to appreciate the rival contentions on behalf of the parties, the Office Notification dated 06.12.2014, is reproduced hereunder for ready reference:-

*“GOVERNMENT OF ASSAM
FINANCE(ESTABLISHMENT-B) DEPARTMENT
DISPUR GUWAHATI-G.*

ORDERS BY THE GOVERNOR

NOTIFICATION

,

Dated Dispur 6th December, 2014

No. FEB.330/2014/1 (B/S):-: In supersession of all earlier orders and in pursuance of Clause (3) of Article 166 of the Constitution of India and all powers enabling in this behalf, the Governor of Assam is pleased to direct that the following further amendment shall be made in Schedule-III of the Delegation of Financial Power Rules, 1999.

Schedule-III Specific powers delegated to all Deputy Commissioners

<i>Sl. No.</i>	<i>Nature of power</i>	<i>Authority</i>	<i>Extent of power</i>	<i>General condition</i>
*****	*****	*****	*****	*****
*****	*****	*****	*****	*****
8.	<i>Sanction of financial assistance to persons who become permanently invalid</i> <i>1) due to the act of terrorist/extremist/miscreant when as per the report of Police, the injury is not a result of private dispute</i> <i>2) during communal/ethnic/group clash due to the firing of security forces (if the permanently invalid person is innocent)</i>	<i>All Deputy Commissioner</i>	<i>Rs 3,00,000.00</i>	<i>a) Provided that Budget provision is available on the basis of</i> <i>b) Report submitted by the DC/SP of the district.</i>

The above order will take effect from the date of issue of this Notification.

Sd/Dr Ravi Kota, IAS,

Commissioner & Secy. To the Govt. of Assam

Finance Department.”

8. A perusal of the aforesaid notification indicates that in Sl. No. 8 of the said notification, the Government of Assam has provided financial assistance of Rs. 3,00,000/- (Rupees Three Lacs Only) to persons who become permanently invalid due to the firing of security forces, subject to the condition that the person is innocent.

9. It appears from the affidavit-in-opposition filed by the respondent No. 4, that the petitioner's husband was a member of the violent mob which was declared unlawful. Paragraph-6 of the aforesaid affidavit-in-opposition is reproduced hereunder for ready reference:-

“6. That with regard to statement made in paragraph 3 of the Writ Petition, the answering deponent begs to state that it is not true that while Mahboob Ahmed Barbhuiya, husband of the petitioner was returning from bank; the police started firing targeting him. Curfew was clamped in Hailakandi town from 1 PM to bring the situation under control and the facts are already mentioned in paragraph No.5 above. After following all measures, to pacify and disperse the aggressive mob, firing was resorted at about 2.30 PM. As such, it is not justified to believe that Mahboob Ahmed Barbhuiya, was returning from bank at 3 PM though curfew was clamped at 1 PM. Moreover, Mahboob Ahmed Barbhuiya, either could have adopted safe passage through sub-ways of

the town, or could have taken help of police to return home. Rather, Mahboob Ahmed Barbhuiya member of the violent mob which was declared unlawful who pelted stone, setting shop and vehicle on fire and while police resorted to fire to control the situation, Mahboob Ahmed Barbhuiya and others sustained injuries.”

10. Further, it appears from the affidavit-in-opposition filed on behalf of the respondent No. 5 that the petitioner’s husband sustained injuries while the Police was trying to control the situation. Paragraph-7 of the aforesaid affidavit-in-opposition is also reproduced hereunder for ready reference:-

“7. That with regard to the averments made in paragraph- 9 of the writ petition, the deponent begs to state that inspite of repeated efforts made by the administration, the crowd could not be dispersed and pacified for which controlled firing was resorted to by the police. Since Sri Mahboob Ahmed Barbhuiya, was member of the violent mob and while police resorted to firing to control the situation, Sri Barbhuiya and others sustained injuries. Besides, Sri Barbhuiya indulged in violence even though curfew was imposed from 1 PM on 10-05-2019 and was also involved in mob activities despite the administration's repeated requests to disperse. Therefore, as per record of the police Sri Barbhuiya is not innocent and the petitioner's prayer for ex gratia may not be considered.”

11. Thus, it appears that there is a suspicion as regards the innocence of the petitioner’s husband. However, the representations filed by the petitioner in respect of financial grant against the aforesaid notification are still present

12. In view of the above, this Court is of the considered view that for the ends of justice, this writ petition can be disposed of with a direction to the writ petitioner to file a fresh claim before the Deputy Commissioner, Hailakandi (respondent No. 5) and as and when such claim is made, the respondent No. 5 shall dispose of the same in accordance with law, after causing due enquiry in the matter, preferably within a period of 2 (two) months from the date of submission of the claim.

13. Needless to clarify that the petitioner while filing the claim before the aforesaid authority, will furnish a certified copy of this Court's order, along with the copy of the writ petition.

14. In the above terms and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant