

GAHC010259492023



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

Case No. : WP(C)/6734/2023

MOMINA KHATUN AND ANR
W/O LT. SAYED ALI, VILL-SUAPATA PART-II, P.O.-SUAPATA, P.S.-
BILASIPARA, DIST-DHUBRI, ASSAM, PIN-783348

2: AYSHA KHATUN
W/O LT. ABDUL SATTAR
VILL-SUAPATA PART-II
P.O.-SUAPATA
P.S.-BILASIPARA
DIST-DHUBRI
ASSAM
PIN-78334

VERSUS

THE STATE OF ASSAM AND 12 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, REVENUE (RELIEF AND REHABILITATION) AND DISASTER
MANAGEMENT DEPARTMENT, DISPUR, GUWAHATI-06

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

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PUBLIC HEALTH DEPARTMENT
DISPUR
GUWAHATI-06

4:THE DISTRICT COMMISSIONER
DHUBRI
ASSAM
P.O. AND P.S.-DHUBRI

DIST-DHUBRI
ASSAM
PIN-783301

5:THE MISSION DIRECTOR
JAL JEEVAN MISSION (JJM)
ASSAM
HENGRABARI
GUWAHATI-36

6:THE CHIEF ENGINEER (PHE)
WATER
ASSAM
HENGRABARI
GUWAHATI-36

7:THE EXECUTIVE ENGINEER (PHE)
DHUBRI DIVISION
P.O. AND P.S.-DHUBRI
DIST-DHUBRI
ASSAM
PIN-783301

8:THE ASSISTANT EXECUTIVE ENGINEER (PHE)
BILASIPARA SUB-DIVISION
P.O. AND P.S.-BILASIPARA
DIST-DHUBRI
ASSAM
PIN-783348

9:THE S.O. (PHE)
BARKANDA SECTION
P.O.-BARKANDA
P.S.-BILASIPARA
DIST-DHUBRI
ASSAM
PIN-783348

10:AMINUL ISLAM (CONDUCTOR)
S/O LT. KHAIRAT HUSSAIN
VILL-CHOTOBASHJANI
P.O.
P.S. AND DIST-DHUBRI
ASSAM
PIN-783301

11:SOFIOR RAHMAN (MASON)
S/O SOBDER ALI

VILL-HATIPOTA PART-I
P.O. AND P.S.-BILASIPARA
DIST-DHUBRI
ASSAM
PIN-783348

12:THE SUPERINTENDENT OF POLICE
DHUBRI
ASSAM
PIN-783301

13:THE OFFICER-IN-CHARGE
BILASIPARA POLICE STATION
P.O.-BILASIPARA
DIST-DHUBRI
ASSAM
PIN-78334

For the Petitioner(s) : Mr. M. Hussain, Advocate

For the Respondent(s) : Mr. A. Bhattacharjee, SC, Revenue
: Mr. B. Gogoi, Standing Counsel
: Mr. I. Borthakur, Standing Counsel
: Ms. S. Sharma, Government Advocate
: Mr. A. A. R. Karim, Advocate
: Mr. D. C. Nath, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 07.08.2024

Heard Mr. M. Hussain, the learned counsel appearing on behalf of the Petitioners and Mr. A. Bhattacharjee, the learned Standing counsel appearing on behalf of the Respondent No.1. I have also heard Mr. B. Gogoi, the learned Standing counsel appearing on behalf of the Respondent No.2; Mr. I. Borthakur, the learned Standing counsel appearing on behalf of the Respondent Nos. 3, 5, 6, 7, 8 and 9; Ms. S.

Sharma, the learned Government Advocate, appearing on behalf of the Respondent Nos. 4, 12 and 13; Mr. A. A. R. Karim, the learned counsel for the Respondent No.10 and Mr. D. C. Nath, the learned counsel appearing on behalf of the Respondent No.11.

2. The Petitioner No.1 is the wife of one Late Sayed Ali and the Petitioner No.2 is the mother of Late Sayed Ali. On 03.03.2023, a revised formal work order for Implementation of Fakiranijhar Pipe Water Supply Scheme under the Dhubri Division for retrofitting under the programme Jal Jeevan Mission Assam was issued by the Executive Engineer (PHE) in favour of the Respondent No.10. In the course of the execution of the work by the Respondent No.10, three numbers of labourers including Late Sayed Ali who were allegedly engaged by the Respondent No.10 who died inside the underground water reservoir due to suffocation. An FIR was filed which was registered and numbered as Bilasipara P.S. Case No.266/2023 under Section 304 of the Indian Penal Code. The post mortem of the victims were conducted at Dhubri Medical College and Hospital on 25.07.2023 and thereupon, the Death Certificate of Late Sayed Ali was issued. The Petitioner No.1 thereupon submitted a representation on 11.09.2023 to the Respondent Authorities with a prayer to pay compensation to the tune of Rs.1,00,00,000/- against Late Sayed Ali under the public law remedy. As no action has been taken, the instant writ petition was filed claiming compensation against all the Respondent Authorities.

3. This Court has duly perused the writ petition including the enclosures therewith. It is nowhere mentioned that the Respondent Authorities had engaged Late Sayed Ali. It is the question of evidence as

to whether Late Sayed Ali was at all engaged by the Respondent No.10.

4. From a perusal of the dispute, it therefore transpires that the dispute between the Petitioners and the private Respondents is a civil dispute claiming compensation on account of the negligence of the Respondent No.10. Under such circumstances, the public law remedy under Article 226 of the Constitution cannot be invoked seeking compensation. Accordingly, this Court is not inclined to entertain the instant writ petition for which the instant writ petition stands dismissed.

5. This Court however observes that if the Petitioners are aggrieved, they are at liberty to approach the appropriate Civil Court seeking compensation against the Respondents herein. This Court taking into account that the instant writ petition is not entertained, observes that the period from the date of filing of the writ petition i.e. from 15.11.2023 till date be excluded while computing the period of limitation, in the circumstance any suit is filed.

JUDGE

Comparing Assistant