

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 563 of 2019****Judgment reserved on 02.12.2019****Judgment delivered on 09.01.2020**

*{Arising out of Order dated 15/10/2019 passed in Writ Petition(C) No. 3124 of 2019
by the learned Single Judge}*

- Vikram Bhatt, aged about 29 years S/o Late Heera Lal Bhatt, Village Maanpur Pahadi, Tahsil Chuikhadaan, District Rajnandgaon C.G.

-----Appellant/ Petitioner.**VERSUS**

1. State of Chhattisgarh through Secretary, Revenue and Disaster Department, Mantralay, Atal Nagar, District Raipur C.G.
2. The Collector, District Rajnandgaon C.G.
3. Sub Divisional Officer (Revenue) Gandai/ Chuikhadan), District Rajnandgaon C.G.
4. Tahsildar, Tahsil Chuikhadan District Rajnandgaon, C.G.

-----Respondents

For Appellant	:	Mr. Parag Kotecha, Advocate
For Respondent-State	:	Mr. Chandresh Shrivastava, Dy. A.G.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****CAV Order****Per Parth Prateem Sahu, J.**

1. The challenge in the present writ appeal is to the order dated 15-10-2019 passed by the learned Single Judge whereby writ petition filed by the appellant was dismissed.
2. The facts of the case are that, on 15-07-2018, father of appellant/ petitioner Late Heera Lal (deceased) went to Gadaghat river where he was struck by thunder and lightning due to which he suffered some injuries and his body fell down in nearby Nala. Due to heavy rains, at the that particular time, suddenly

water level increased and deceased's body flowed away due to heavy water flow. The said incident was eye-witnessed by Anil Kumar and Nakul Vishwakarma, who came to village and intimated the incident to the villagers. After getting the information about incident, daughter-in-law of the deceased as well as villagers went to spot and tried to search but deceased's body could not be traced out. The incident was reported to the concerned Police Station. The police officials registered a case against missing person and looking to the nature of intimation received by the police officials, they have also made an attempt to search and trace out deceased's body with the help of divers but failed in their attempt.

3. When after making efforts and attempts by the villagers as well as by the police officials and also after lapse of time, deceased's body could not recovered, the appellant/ petitioner filed an application before the Court of Naib Tahsildar, Gandai C.G. for 'grant' under the Circular issued by the State Government which is part of Revenue Book circular part 6-4 of which amended notification/ circular was issued on 09-06-2015. The Naib Tahsildar, after receiving application supported with an affidavit of Smt. Kaleshiya Bai daughter-in-law of deceased, Ganesh Lal and Anil Kumar, called for information from the concerned police station. The Station House Officer (SHO) forwarded information on 08-03-2019 wherein it was intimated that such incident was reported by Himanchal Bhatt along with Kotwar of village and some other villagers. The Naib Tahsildar also called for Panchnama. It was signed by Jagdish Das Kotwar, Dashrath Gond (Village-Patel), Bahur Singh, Up-Sarpanch of Village Panchayat. The Naib Tahsildar on the basis of the material and evidence placed before him has recorded that there was report of deceased's drowning in the Surahi Nala and flowing away of the body in heavy water flow, divers tried to search for body, the police officials registered a case for 'missing person' and as body of deceased could not be recovered hence there was no possibility of conducting post-mortem. The

Naib Tahsildar after considering the materials placed before him held that in case of death, post-mortem report is a necessary document in order to seek grant of financial aid and in absence of such report, death itself is not proved, therefore, application for grant of compensation amount/ financial aid is liable to be dismissed and the Naib Tahsildar forwarded the same report to the Collector through Sub-Divisional Officer (SDO). The SDO approved the report submitted by the Naib Tahsildar and forwarded the same to the Collector. On 19-06-2019, the Deputy Collector after considering the report and its contents forwarded by the Naib Tahsildar arrived at a finding that there is no post-mortem report available on record which is one of the essential documents for accepting the claim and dismissed the claim/application in its entirety.

4. The appellant/ petitioner aggrieved by the order passed by the Deputy Collector on 19-06-2019, filed a writ petition which came to be dismissed by recording following reasons as below:

“4. This Court finds it difficult to accept the contention of the petitioner that the authorities concerned have not taken note of the oral evidence laid by a few villagers and the Police report lodged so far as the incident is concerned. For awarding of compensation by the State Government what is primarily required is cogent evidence to establish that the deceased has firstly died, secondly, deceased died a accidental death either by drowning or by lightening. In the instant case however there is no cogent evidence whatsoever available except for the bald oral statement made by a few villagers in respect of the death of the deceased person Late Heera lal Bhatt.

5. Admitted position from the factual matrix of the case itself is that the body of the deceased could not be traced or recovered. In the absence of recovery of the body, there was no postmortem report available to determine the death of the deceased and the cause of death of the deceased.”

5. Mr. Parag Kotecha, learned counsel for the appellant submits that there are ample material and evidence available on record that on 15-07-2018 Heera Lal went to river/ nala where the incident happened, some villagers saw the body floating in water and due to heavy rains, flow of water was also heavy in

which the body of deceased Heera Lal flowed away in front of their eyes. He also submits that, immediately the incident was reported to Police Station and police authorities with the help of divers also made attempt to search the body of deceased, but could not succeed and the investigation could not be completed by the police officials. But, they have registered the case only as report of missing person. Learned counsel submits that immediately on the next day the police authorities recorded submissions of Nakul Vishwakarma who is a resident of the same village as an eye-witness to the incident. In pursuance to the order of Naib Tahsildar, Panchnama was also prepared and statement of Jagdish Das Kotwar of the Village and Dashrath Gond (Patel of village), was also recorded in which they have stated that due to thunder and lightning, Heera Lal fell down in Nala and drowned in it and his body flowed away along with the water due the heavy water flow. The application for granting aid under the State Government scheme was dismissed only on the count that the body of the deceased was not recovered, due to which, cause of death could not be proved by conducting post-mortem. He submits that, the act on behalf of respondents is contrary to the object of circular issued by the State Government for providing grant in aid scheme to affected persons. He submits that the eye-witness categorically stated the fact of incident and drowning of deceased in water.

6. Per contra, Mr. Chandresh Shrivastava, learned Deputy Advocate General representing the respondents-State submits that it is a case of the appellant that his father died due to drowning and by suffering electrocution due to lightening, but they have failed to prove the cause of death. He submits that for getting grant in aid under the scheme of State Government forming part of Revenue Book circular part 6-4, it is important that the applicant/ beneficiary should prove the death as well as cause of death. Learned counsel submits that in the case at hand, death of appellant's father Heera Lal itself has not been proved, therefore, the respondents-authorities have rightly dismissed the

application for grant in aid.

7. We have heard learned counsel for the respective parties and also perused the records with utmost circumspection.
8. From perusal of records, particularly, the report submitted by the SHO of Police Station, Gandai district Rajnandgaon, wherein it is mentioned that the report was lodged by one Himanchal Bhatt S/o Ram Kumar Bhatt (one of the residents of village) along with Kotwar of Village and some other villagers that on 15-07-2018 at about 04:00 PM, Heera Lal was lying at Surahi Nala and Nakul Vishwakarma and Anil Chawle who are resident of the same village tried to pull-out the body of Heera Lal from the said Nala but due to rainy season and heavy water flow, they could not able to pull it out, and the body flowed away along with heavy water flow. On the basis of said information, case was registered as 'missing person' bearing No. 11/18. From perusal of said report of 08-03-2019 submitted by the SHO to Naib Tahsildar, the fact that, on 15-07-2018 and some villagers including Kotwar of the Village have lodged the report, on the other hand, statement of Nakul Vishwakarma is also available at page 14 of the writ petition and the gist of his statement is already mentioned as part of report by the SHO, dated 08-03-2019. After direction/ order of the Naib Tahsildar, Panchnama of incident was also prepared on 04-04-2019 which was signed by Jagdish Das, Kotwar of Village, Dashrath Gond, Patel of the Village (appointed under Section 222 of the Chhattisgarh Land Revenue Record) Bahur Singh, Up-Sarpanch of Village Panchayat as well as Secretary of Village Panchayat Maanpur Pahadi. Perusal of gist of Panchnama would show that on 15-07-2018, such incident took place, it was informed to villagers by witness who were present at old Panchayat building to attend panchayat meeting; Panchnama reads further that after getting information of incident villagers reached the spot and tried to search for the body of deceased but they failed in their attempts. It also records that for

about 20 days, when deceased could not be traced out or he himself did not return, then according to the opinion of the members of the community and villagers, they accepted it as death and last rites ceremony was performed by the appellant.

9. In view of the aforementioned materials available on record, the claim made by the appellant/ petitioner *prima facie* cannot be treated to be false and fabricated claim in view of the statement of witnesses recorded by the Naib Tahsildar, Police report and the Panchnama. It is not a case that the deceased Heera Lal was suffering from mental illness or critical disease or there was any other reason for leaving house. Looking to the statement of Jagdish Das, it reveals that there was incident of drowning and flowing away of the deceased's body, villagers tried to search the body, also the divers called by the police authorities made their attempts to trace it out but deceased's body could not be traced out. From the aforementioned materials available on record, there appears to be some substance in the claim of drowning and flowing away of the body to which the Naib Tahsildar after investigation has not given adverse finding on the application of grant in aid but the application of the appellant/ petitioner has only been dismissed on the ground that the death as well as the cause of death could not be proved. The circular dated 09-06-2015 has been issued by the State Government to grant financial aid to the affected persons suffering as a result of natural calamity and looking to the object of the circular i.e. grant of financial aid to the affected persons who lost life of their family member due to some natural calamity then the said person/ family should not be deprived of the benefit accrued from the said circular on the grounds of technicalities when all other things or facts particularly the incident is proved.
10. The Naib Tahsildar was having an obligation to enquire into the incident reported to him by way of filing application under part of Revenue Book

circular part 6-4. The application forwarded to the Naib Tahsildar was supported by affidavit in which names of eye-witnesses were mentioned but Naib Tahsildar has not recorded the evidence of the said eye-witnesses nor given very specific finding with regard to happening of incident as mentioned in the application filed before it by the appellant.

11. In view of the above facts available on record, we set aside the impugned order passed by the learned Single Judge and remit back the matter to the Court of Naib Tahsildar with a direction to re-open the case No. 39B/121/2018-19 and to record evidence of Nakul Vishwakarma and Anil Kumar, who are shown as eye-witnesses to the incident. We further direct the Naib Tahsildar to record specific finding on the issue as to whether the incident, as pleaded, took place or not on the basis of materials available and if he reaches to a conclusion that incident of drowning and flowing of the body of Heera Lal was correct and proved, then he shall pass appropriate order keeping in mind the object of the Circular dated 09-06-2015, part of Revenue Book Circular part 6-4.

12. With the aforesaid observation, the appeal stands disposed of.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge