

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

**HON'BLE JUSTICE SUBRATA TALUKDAR
AND
HON'BLE JUSTICE ANIRUDDHA ROY**

***FMA 1313 of 2018
With
IA No. CAN 1 of 2018 (Old No. CAN 7951 of 2018)

Debdas Ganguly @ Gangopadhyay & Anr.
-Vs.-
The State of West Bengal & Ors.***

For the Appellants	: Mr. Chitta Ranjan Chakraborty Mr. Dip Jyoti Chakraborty
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For the State/Respondents	: Mr. Joytosh Majumder Mr. Pinaki Dhole
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Heard on	: 22/12/2020
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Judgment on	: 11/03/2021
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Subrata Talukdar, J:

The action in this appeal challenging reliefs claimed before and denied by the Hon'ble Single Bench, swims in equity but has law on both its banks.

The facts of this case are short.

The petitioner No.1 is the father of a Civil Defence Volunteer (CDV), since deceased. The name of the deceased CDV was one Tarapasanna Ganguly. The appellant No.2, who was also the writ petitioner No.2, is the mother of the deceased Tarapasanna Ganguly.

The deceased Taraprasanna Ganguly was working as a *CDV* under the Department of Civil Defence, Government of West Bengal.

On the 12th of June 2015 the deceased Taraprasanna Ganguly was directed along with other volunteers to proceed for rescue operations at Purulia Sadar. Under instructions from the Sub-Divisional Officer (*SDO*), Raghunathpur, the rescue party, including the late Taraprasanna Ganguly, proceeded by road in a rescue vehicle provided by the department.

En route to the rescue site, the departmental vehicle met with a severe accident. In the accident four other *CDVs* accompanying the late Taraprasanna Ganguly along with the driver of the rescue vehicle were critically injured. However, the late Taraprasanna Ganguly was the only *CDV* in the party to tragically lose his life in the accident. Following the *post mortem* and the filing of the First Information Report, the petitioner No.1, i.e. the father of the deceased Taraprasanna Ganguly, wrote to the *SDO*, Raghunathpur for release of compensation in favour of the family of his dead son. Such representation was received by the office of the *SDO*, Raghunathpur, also a respondent in the writ petition, on the 10th of June, 2015.

It must be mentioned at this juncture that in terms of the Memo No. 120/*SDO*(R)/C dated the 22nd of September 2013, the *SDO*, Raghunsthpur had selected five *CDVs*, including the deceased Taraprasanna Ganguly, to be a part of the Disaster Management Team which was to visit Purulia Sadar in rescue efforts arising out of the uprooting of trees consequent to Cyclone Amphan.

It would be also relevant to mention at this juncture that by a communication bearing Memo No. 1200/BDO/RNP-I dated the 4th August 2015, the BDO, Raghunathpur-I Development Block wrote to the SDO Raghunathpur with a proposal that since the petitioner No.1, i.e. the father of the late Taraprasanna Ganguly, has already applied for accident benefits from the Workers Welfare Board (WWB), hence his prayer for *ex-gratia* may not be recommended.

Thereafter, by a communication bearing the Memo No. 989/1(2)-DCD dated 4th of November 2015 addressed by the Additional Director General of Police (ADGP) and Director of Civil Defence to the Principal Secretary, Department of Civil Defence, it was, *inter alia*, stated as below:-

“Sub : Road accident of CDRV bearing No. WB-37C/6787 on 12.06.2015.

Ref : No. 2195/SDO/RNP/CD dated 16.10.2015 of SDO & Dy. Controller of Civil Defence, Raghunathpur, Purulia.

I am forwarding herewith Memo NO. cited under reference along with required documents as sought from the DM & Controller of Civil Defence, Purulia vide this office Memo No. 567/DCD dated 07.07.2015 (copy enclosed) for financial assistance in favour of the family of deceased CDV Taraprasanna Ganguly, S/O Debdas Ganguly of Vill.- Sanka, P.S. – Raghunathpur, Dist. Purulia who lost life in road accident on way to attend the rescue operation and five other CDVs accompanying him along with driver got critically injured.

In view of above, it is recommended for ex-gratia an amount of Rs. 5 Lacs for the deceased CDV Late Taraprasanna Ganguly and other CDVs who got injured namely :-

- 1) Sri Jagganath Roy, S/O Subodh Roy,*
- 2) Sri Sandip Gorain, S/O Tapan Gorain,*
- 3) Sri Prasanta Majee, S/O Nani Gopal Majee,*
- 4) Sri Bikash Acharya, S/O Basudev Acharya*
and

5) Sri Sourav Mishra (vehicle's driver) S/O Pradip Kr. Mishra

an amount of Rs. 2 Lacs per head to boost the morale of CDV and save concept of qrt from demoralizing effect.

Concerning this, it is also requested to make necessary arrangement for repairing the CDRV which met accident on 12.06.2015 and not roadworthy at present. So, from the technical point of view MVI (Technical) Raghunathpur, Purulia has submitted his inspection report depicting the damages and probable estimated cost of Rs. 72,245/- for repairing the said CDRV bearing No. WB-37C/6787 through the Addl. R.T.O. & SDO & Dy. Controller of Civil Defence, Raghunathpur, Purulia which is enclosed herewith in enclosures Sl. No. 19, 20 & 21.

Hence it is requested that total amounting to Rs. 5Lacs for the deceased CDV + Rs. 10 Lacs(Rs. 2 Lacs x 5 injured CDVs) + 72,245/- (probable estimated cost for repairing the accidental vehicle) = Rs. 15,72,245/- (Rupees fifteen Lacs seventy two thousand two hundred forty five) only may kindly be sanctioned and allotted from your end in favour of DM & Controller of Civil Defence, Purulia to meet up the compensation and repairing of CDRV as stated in the foregoing paras.

This is for favour of your kind perusal and necessary action.

Enclo: Relevant Reports/documents of 50(fifty) pages & copy of this office Memo No.567/DCD

Dated 07/07/2015.

Sd/-

(Gangeswar Singh)

ADGP & Director of Civil Defence,
West Bengal.

Memo NO : 989/1(2)/DCD

Copy forwarded to:

1. The DM & Controller of Civil Defence, Purulia.
2. P.S. to Hon'ble MIC, Govt. Of West Bengal, Department of Civil Defence, "Nabanna", 325, S.C. Chatterjee Road, Howrah-2."

It would be thus, evident from the communication of the ADGP and Director of Civil Defence that a total of Rupees Fifteen Lakhs and odd were requested to be sanctioned to the account of the District

Magistrate and Controller of Civil Defence, Purulia towards compensation and repair of the rescue vehicle. It is also noticed that out of the said Rupees Fifteen Lakhs and odd, Rs. 5 Lakhs were directed to be sanctioned in favour of the late Taraprasanna Ganguly.

By a further communication dated 5th of November 2015, the ADGP and Director of Civil Defence wrote to the District Magistrate and Controller of Civil Defence, Purulia to issue a Non-payment Certificate in favour of the family of the deceased so that the family of the deceased can receive compensation/ *ex-gratia* as recommended by the communication dated 4th November 2015 (*supra*).

It would be not out of place to also mention at this juncture that by the Memo No. 2367/SDO/RNP/CD dated 18th November 2015 the SDO and Deputy Controller of Civil Defence, Raghunathpur forwarded the prayer of the father of the deceased/ the present appellant No. 1 to the District Magistrate and Controller of Civil Defence, Purulia for release of “*the admissible compensation as claimed in favour of the bereaved and wretched family at the earliest.*” Following repeated correspondence by and between the family of the deceased and the authorities on the ground, the attention of this Court is next drawn to the Report called for by the Hon’ble Single Bench in the writ petition, being WP 2666 (WP) of 2017, *vide* its interim order dated 19th April, 2017.

The Report was filed in the form of an affidavit by one Tapas Kumar Bandopadhyay, Deputy Controller of Civil Defence (Headquarter) Kolkata. The Report of the then Director of the Civil

Defence, West Bengal was made part of the affidavit filed before the Hon'ble Single Bench. The Report of the said Sri Bandopadhyay is dated the 13th of June 2017 and, *inter alia*, reads as follows:-

“Report of the Director of Civil Defence, West Bengal

Reference : W.P. No.2666(W) of 2017 – Debdas Ganguly & Anr. Vs. The State of West Bengal & Ors.

In compliance with the order of the Hon'ble High Court in the above mentioned case, it is humbly submitted that the Director of Civil Defence, West Bengal was not the competent authority to sanction ex-gratia in favour of the next of kin of the deceased Civil Defence Volunteer. He could have only recommended a case to the Department for consideration of the Government on humanitarian grounds.

2. In pursuance of the letter of the Sub Divisional officer and Deputy Controller of Civil Defence, Raghunathpur, District Purulia vide his No.2195/SDO/RNP/CD dated 16th October, 2015 the then Director of Civil Defence, West Bengal made a correspondence with the Department of Civil Defence, Government of West Bengal for granting an ex-gratia compensation of an amount of Rs. 5.00 lakhs in favour of next of the kin of the deceased Civil Defence Volunteer namely Shri Taraprasanna Ganguly who died in road accident on way to attend a rescue operation and an amount of Rs. 2.00 each to five other Civil Defence Volunteers accompanying him as well as the driver who got seriously injured. This refers to this office Memo No.989/DCD dated 4th November, 2015. A copy of the aforesaid correspondence is enclosed.

3. The department of Disaster Management, Government of West Bengal after due consideration of the matter sanctioned an amount of Rs. 2.00 lakhs only in relation to the above noted case vide Memo No. 1019RI/FR/I/4P-9/2011 dated 30th December, 2015. A copy of the same is also enclosed.

4. It is humbly submitted that the undersigned is not in a position to place before the Hon'ble Court the reasons as to why the Government sanctioned an amount of Rs. 2.00 lakhs which was lower than that recommended by this office as he is not privy to

the relevant records or file belonging to the Department of Disaster Management, Government of West Bengal.

5. It is also humbly submitted that there is no rule so far for payment of ex-gratia compensation to Civil Defence Volunteers in such cases. There is also no scheme so far for giving compassionate appointment in respect of Civil Defence Volunteers.”

Mr. Majumdar, Ld. Government Pleader, relies on the said Report dated 13th of June 2017(supra) and submits that there being no rules/instructions/guidelines for grant of compensation in cases such as this, however unfortunate the personal nature of the facts, there can be no legal right to claim a compensation of Rs. 5 Lakhs towards *ex-gratia* by the family of the deceased. Mr. Majumdar submits that *ex-gratia* is not a legally admitted norm of paying compensation but would depend upon the available resources and the discretion of the paying authority viz., the State Government.

It is submitted that the communication dated 4th November 2015 by the then ADGP and Director of Civil Defence seeking a compensation of Rs. 5 Lakhs in favour of the family of the deceased is merely in the nature of a recommendation. Such recommendation is not binding on the ultimate disbursing authority, i.e. the Finance Department.

Therefore, Learned Government Pleader submits that the ultimate sanction of Rupees Two Lakhs in favour of the family of the deceased is justified. The axiomatic submission follows that in the absence of a legal right to claim a compensation of Rs. 5 Lakhs, a writ petition to sustain an unavailable right is not maintainable. Payment

of the *ex-gratia* being a discretion of the State Government, the Hon'ble Single Bench has correctly decided the issue.

Learned Government Pleader further submits that the Hon'ble Single Bench has also correctly decided the issue of non-grant of compassionate appointment to a family member of the deceased. Such relief is not only not maintainable in law since compassionate appointment cannot be a legal right, such relief is also over and beyond the scope of the writ petition which must be confined to claim of a single relief, if available and, in this case the writ petitioners have claimed *ex-gratia* with an additional relief of compassionate appointment.

Mr. Chakraborty, Ld. Counsel for the petitioner, however relies on the legal principle that discretion cannot be arbitrarily exercised relying on the authorities of 2011)14 SCC 481, *In Re: Lilabati Behera Vs. State of Odisha*; 1993) 2 SCC 746, *In Re: Sube Singh Vs. State of Haryana*; 2006) 3 SCC 178, *In Re: Helen C. Rebello Vs. Maharashtra State Road Transport Corporation*, 1999) 1 SCC 90; as well as the Personal Injuries (Emergency Provisions Act), 1962 and the Civil Defence Act, 1968 read with its Rules and Regulations.

Mr. Chakraborty submits that the family of the deceased is entitled to a compensation commensurate to the factors which require to be weighed in at the time of his death and therefore such compensation in the form of *ex-gratia* cannot be whimsical.

It is lastly submitted that in addition to the *ex-gratia* the family of the deceased is also entitled to a compassionate appointment in favour of an eligible family member.

Having heard the parties and considering the materials placed, this Court finds that the stand of the Ld. Government Pleader is one based on the absence of any legal right in favour of the appellant/ the writ petitioner to claim *ex-gratia*. It has been therefore submitted that neither the writ petition nor the appeal is maintainable.

The stand taken by Ld. Government Pleader (*supra*) requires to be examined in the context of the powers of the writ Court, a) to direct payment of *ex-gratia*; and b) at/of a certain amount.

The law surrounding *ex-gratia* has intrigued jurists and, arguably, finds place through an elaborate discussion in the reported authority of 2011) 13 SCC 262, *In Re: State of Rajasthan Vs. Sanyam Lodha*. The facts of this case and the law declared has, to the mind of this Court, a bearing on the present facts. Therefore, the authority of 2011) 13 SCC 262(*supra*) requires to be quoted at some length:-

“Delay condoned. Leave granted.

This appeal arises from a decision of the Rajasthan High Court in a public interest litigation filed by a Legislator and social activist complaining of arbitrary and discriminatory disbursement of relief under the Chief Minister's Relief Fund (for short 'Relief fund') under the Rajasthan Chief Minister's Relief Fund Rules, 1999 (for short, 'the Relief Fund Rules'). The respondent alleged that during the period January 2004 to August, 2005, challans/chargesheets were filed in 392 cases relating to rape of minor girls; that out of them, 377 minor girls, did not get any relief or assistance from the Relief Fund, 13 were granted relief ranging from Rs.10,000 to 50,000, one victim (minor 'K') was

given Rs.3,95,000 on 11.8.2004 and another victim (minor 'S') was given Rs.5,00,000 on 25.6.2005.

2. The respondent submitted that minor girls, that too victims of rape, belong to a weak and vulnerable group who are seldom in a position to seek relief personally; and that if the Chief Minister was of the view that monetary relief should be granted to such victims of heinous and depraved crimes, all similar victims of rape should be given monetary relief. According to him if there were 392 victims of rape, they should all be similarly treated and if some are given relief, others also should be given similar relief. It is contended that when discretion vested in the Chief Minister in respect of the Relief Fund is exercised in a manner that 377 victims, are offered and 13 are paid amounts varying from Rs. 10,000 to 50,000 and two victims alone are paid Rs. 3,95,000 and Rs. 5,00,000 it leads to inferences of arbitrariness and discrimination.

3. The appellant does not have any grievance about payment of Rs.5,00,000 or Rs.3,95,000 to two of the victims. It is also not his complaint that the said two victims were undeserving. His grievance is the other way around. According to him if two of the victims were paid relief amounts in the range of Rs.3,95,000 and Rs.5,00,000, there was no justification for not paying any amount to 377 victims, or for paying amounts which were comparatively very small (that is Rs.10,000 to 50,000) in the case of thirteen victims. He contended that like other governmental resources or funds, the distribution of monetary relief under the Relief Fund should be equitable, non-discriminatory and non-arbitrary. He submitted that paying very high amounts in only one or two cases merely because of media focus on those cases or because the case had become caste-sensitive or because it was politically expedient, while ignoring other similar cases, was neither warranted nor justified.

4. The respondent also contended that disbursement of monetary relief to the victims cannot be in the absolute discretion or according to the whims and fancies of the Chief Minister and grant of monetary relief under the Relief Fund should not become distribution of government largesse to a favoured few. The respondent therefore filed a writ petition (impleading the appellants, namely the State of Rajasthan, Home

Ministry of Secretary to the Chief Minister, as the respondents), seeking the following reliefs :

(i) a direction to the appellants to give to all rape victims, who had not been granted any monetary relief or who had been granted a negligibly small relief, monetary relief of Rs.5 lakhs as in the case of 'minor K';

(ii) for a declaration that failure to give monetary relief, or failure to give a uniform monetary help, to all victims of rape from the Relief Fund is illegal, arbitrary and unconstitutional; and

(iii) for deprecation of the misuse or discriminatory utilization of the Chief Minister's Relief Fund with a direction to the Chief Minister to adopt a fair and non discriminatory policy in regard to disbursement of amounts from the Relief Fund to similarly situated persons, in particular minor victims of rape.

5. The appellants resisted the writ petition contending that disbursement of funds from the Chief Minister's Relief Fund is in implementation of the policy of the state government to place at the disposal of the Chief Minister of the State, some funds for granting relief to the needy and deserving, including victims of calamities, disasters and traumatic incidents. It was submitted that the discretion has been vested with the Chief Minister who is the highest executive functionary in the State, to ensure proper utilization of the fund, that vesting of such discretion to grant some relief to victims of disasters, accidents and gruesome incidents, could not be subjected to any rigid guidelines, and that the discretion and power to grant relief from the said fund is exercised by the Chief Minister in appropriate and deserving cases in public interest. It is contended that exercise of discretion in granting monetary benefit under such a Relief Fund by a high functionary cannot be subjected to principles of equality and non discrimination.

6. The High Court allowed the writ petition by order dated 18.12.2007. It was of the view that all minor victims of rape required to be treated equally for the purpose of grant of relief by the Chief Minister under the Relief Fund. Consequently, the Division Bench directed that Rule 5 of the Relief Fund Rules 1999 should be read (prospectively) as under :

"This fund shall be under Hon'ble the Chief Minister so that he/she may utilize the fund equally and without discrimination for grant of financial help."

The said order is challenged by the appellants in this appeal by special leave.

7. On the contentions urged in this appeal, the following questions arise for consideration :

(i) Whether the High Court could have substituted Rule 5 of the Relief Fund Rules?

(ii) Whether the court was justified in holding that all victims should be "treated equally" while granting relief under the Chief Minister's Relief Fund.

(iii) Whether a rule could be interfered merely on the ground it vests unguided discretion?"

After a discussion on the Chief Minister's Relief Fund, the Hon'ble Apex Court further discussed as follows:-

"19. Having regard to the scheme of the Relief Fund Rules, grant and disbursement of relief amount under the said Relief Fund Rules is purely ex-gratia, at the discretion of the Chief Minister. The Relief Fund Rules do not create any right in any victim to demand or claim monetary relief under the fund. Nor do the Rules provide any scheme for grant of compensation to victims of rape or other unfortunate circumstances. Having regard to the nature and scheme of the Relief Fund and the purposes for which the Relief Fund is intended, it may not be possible to provide relief from the Relief Fund, for all the affected persons of a particular category. Monetary relief under the Relief Fund Rules may be granted or restricted in exceptional cases where the victims of offences, have been subjected to shocking trauma and cruelty. Naturally any public outcry or media focus may lead to identifying or choosing the victim, for the purpose of grant of relief. Other victims who are not chosen will have to take recourse to the ordinary remedies available in law. It is not possible to hold that if one victim of a particular category is given a particular monetary relief under the Relief Fund Rules, every victim in that category should be granted relief or that all victims should be granted identical relief.

20. The need to treat equally and the need to avoid discrimination arise where the

claimants/beneficiaries have a legal right to claim relief and the government or authority has a corresponding legal obligation. But that is also subject to the principles relating to reasonable classification. But where the payment is ex-gratia, by way of discretionary relief, grant of relief may depend upon several circumstances. The authority vested with the discretion may take note of any of the several relevant factors, including the age of the victim, the shocking or gruesome nature of the incident or accident or calamity, the serious nature of the injury or resultant trauma, the need for immediate relief, the precarious financial condition of the family, the expenditure for any treatment and rehabilitation, for the purpose of extension of monetary relief. The availability of sufficient funds, the need to allocate the fund for other purposes may also play a relevant role. The authority at his discretion, may or may not grant any relief at all under Relief Fund Rules, depending upon the facts and circumstance of the case.

22. All functionaries of the State are expected to act in accordance with law, eschewing unreasonableness, arbitrariness or discrimination. They cannot act on whims and fancies. In a democracy governed by the rule of law, no government or authority has the right to do what it pleases. Where the rule of law prevails there is nothing like unfettered discretion or unaccountable action. But this does not mean that no discretion can be vested in an authority or functionary of high standing. Nor does it mean that certain funds cannot be placed at the disposal of a high functionary for disbursal at his discretion in unforeseen circumstances. For example, we may refer to the extreme case of secret funds placed at the disposal of intelligence organizations and security organizations (to be operated by very senior officers) intended to be used in national interest and national security or crime detection relating to serious offences, either to buy information or to mount clandestine operations. Such funds should not be confused with slush funds kept for dishonest purposes. The expenditure/disbursals from such secret funds are not subjected to normal audits nor required to be accounted for in the traditional manner.

24. A Constitution Bench of this Court in B.P. Singhal v. Union of India (2010) 6 SCC 331 while

explaining the nature of judicial review of discretionary functions of persons holding high offices held that such authority entrusted with the discretion need not disclose or inform the cause for exercise of the discretion, but it is imperative that some cause must exist as otherwise the authority entrusted with the discretion may act arbitrarily, whimsically or mala fide. Elucidating the said principle this Court observed:

"The extent and depth of judicial review will depend upon and vary with reference to the matter under review. As observed by Lord Steyn in Ex parte Daly [2001 (3) All ER 433], in law, context is everything, and intensity of review will depend on the subject-matter of review. For example, judicial review is permissible in regard to administrative action, legislations and constitutional amendments. But the extent or scope of judicial review for one will be different from the scope of judicial review for other. Mala fides may be a ground for judicial review of administrative action but is not a ground for judicial review of legislations or constitutional amendments."

Reading the above authority in the light of the facts of this case, it is evident that the State respondents did not bother to give any explanation for exercising their discretionary power in the manner it was done. Quite to the contrary, the recommendation of the Director, CDV and ADGP, West Bengal dated 4th of November 2015(supra) reiterates the fundamental principles of Article 14 of the Constitution of India. The recommendation of the Director, CDV is founded on the solid reason that even when it comes to payment of *ex-gratia* the family of the dead need to be paid more than the family of the injured. Accordingly, the *ex-gratia* for the dead person was fixed at Rs. 5 lakhs and for that of each of the injured was fixed at Rs. 2 lakhs. The differentia created by the recommendation was reasonable, fair and on constitutional lines.

On the other hand, the Head of Account and Scheme Description for *ex-gratia* payment to the ‘families of indigent victims due to accident’ only mentions an allotted amount of Rs. 2 lakhs. No distinction is drawn between the dead and the injured and all are classified in a single unit comprising ‘families of indigent victims due to accident’. Again, the Head of Account signed by the Joint Secretary, Department of Disaster Management, Government of West Bengal being an Annexure to Memo No. 1019RI/FR/I/4P-9/2011 dated the 30th of December 2015 which is the Allotment Order, sanctions the fund of Rs. 2 lakhs towards *ex-gratia* to one person who dies due to road accident without mentioning any reasons in support thereof.

Read further with the above Allotment Order and the Annexured Head of Account to the Memo, both bearing the self-same Memo No. and date, the Report of the Director, CDV dated 13th June 2017, *inter alia*, reads as follows:-

“Report of the Director of Civil Defence, West Bengal

.....

3. The Department of Disaster Management, Government of West Bengal after due consideration of the matter sanctioned an amount of Rs. 2.00 lakhs only in relation to the above noted case vide Memo No. 1019RI/FR/I/4P-9/2011 dated 30th December, 2015. A copy of the same is also enclosed.

4. It is humbly submitted that the undersigned is not in a position to place before the Hon’ble Court the reasons as to why the Government sanctioned an amount of Rs. 2.00 lakhs which was lower than that recommended by this office as he is not privy to the relevant records or file belonging to the Department of Disaster Management, Government of West Bengal.

5. It is also humbly submitted that there is no rule so far for payment of *ex-gratia* compensation to Civil Defence Volunteers in such cases. There is

also no scheme so far for giving compassionate appointment in respect of Civil Defence Volunteers.”

The Report of the Director, CDV is part of the Affidavit of the said Sri Bandopadhyaya (supra).

On a holistic consideration of the above facts this Court is of the considered view that even if the stand of the Ld. Government Pleader is arguably accepted that there is no legal right to claim *ex-gratia* of a certain amount or, for that matter *ex-gratia* at all, the appellants/ the writ petitioners have a minimum right to claim *ex-gratia* for the dead over and above the *ex-gratia* paid to the injured.

There is no material placed before this Court either on behalf of the appellants/ the writ petitioners or, on behalf of the State Respondents, of the amounts respectively paid to each of the injured in the same road accident which claimed the life of the son of the present appellants. The principle that the discretion to pay even *ex-gratia* must follow standards of reasonable classification laid down by Article 14 of the Constitution of India is too trite to be re-emphasised.

To the mind of this Court, the action of the appellant/ the writ petitioner is maintainable to the extent that reasons can be sought from the State respondents on, *a)* the quantum of compensation disbursed to the dead and the injured respectively; and *b)* whether the *ex-gratia* paid on account of the death of the only son of the writ petitioners who was also the only breadwinner in the family was *just*. The requirement to act reasonably and fairly overwhelms the stand of the State respondents other than the then Director, CDV being the

author of the Memo dated 4th November, 2015, that when it comes to *ex-gratia* the State can exercise discretion at its *ipse dixit*.

Although, the Hon'ble Apex Court in the facts of 2011) 13 SCC 262 (supra) took a final decision to the effect that the distinction in payments to the rape victims in Rajasthan was based on an *intelligible differentia*, no such reasoning is given or, cared to be given by the State respondents in the facts of this case.

For the further benefit of this discussion, this Court cannot help but notice the principle of *just* compensation with reference to a claim arising out of death in a road accident. Paragraph 12 from the authority of the Hon'ble Apex Court as reported in 2003) 7 SCC 197 requires to be quoted.

"12. It is true that perfect compensation is hardly possible and money cannot renew a physique frame that has been battered and shattered, as stated by Lord Merris in West v. Shepard (1964 AC 326). Justice requires that it should be equal in value, although not alike in kind. Object of providing compensation is to place claimant as far as possible in the same position financially as he was before accident. Broadly speaking, in the case of death basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss, expenses, etc. and loss to the estate. Object is to mitigate hardship that has been caused to the legal representatives due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring value of human life and measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favour it is awarded. Upjohn L.J. in Charter House Credit v. Jolly (1963) 2 CB 683) remarked, 'the assessment of damages has never been an exact science; it is essentially practical'."

The authority of 2003) 7 SCC 197 is therefore referred to in this discussion to highlight the need to assess the *just* value of human life even as understood in *pari materia* circumstances.

For the reasons above, the matter stands remanded to the Principal Secretary, Finance Department, Government of West Bengal to consider the claim of the appellants keeping in view the above discussion and pass a reasoned order which shall be then communicated to the appellants.

It is expected that the exercise shall be completed not later than a period of eight weeks from the date of communication of this order.

In the event the reasoned order is issued in favour of the appellants, the outstanding differential amount shall be released to the appellants not later than two weeks after the reasoned order is communicated to the appellants.

However, the prayer for compassionate appointment in favour of a family member of the deceased is denied on the ground of the lack of maintainability of a second prayer in a single writ petition. Such prayer, in the opinion of this Court, is not legally consequential to a claim to *ex-gratia*.

However again, the denial of the prayer for compassionate appointment is not on merits but, on the lack of maintainability of the same. It will be open to the appellants/ the writ petitioners to take steps for claiming compassionate appointment strictly in accordance with law.

FMA 1313 of 2018 with ***IA No. CAN 1 of 2018 (Old No. CAN 7951 of 2018)*** stands accordingly **disposed of**.

There will be no order as to costs.

Parties shall be entitled to act on the basis of a server copy of the Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Aniruddha Roy, J.)

(Subrata Talukdar, J.)