

GAHC010050452017



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

Case No. : WP(C)/7080/2017

MOMI SAIKIA

VERSUS

THE STATE OF ASSAM and 3 ORS
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, ASSAM ACCORD
IMPLEMENTATION DEPTT., DISPUR, GUWAHATI-6.

2:THE DEPUTY COMMISSIONER
NAGAON
ASSAM.

3:THE BRANCH MANAGER
STATE BANK OF INDIA
SAMAGURI BRANCH

P.O. BHELEUGURI
P.S. SAMAGURI
ASSAM.

4:KHAGEN SAIKIA

S/O. LT. KATIRAM SAIKIA

For the Petitioner (s) : Mr. J.C. Borah, Advocate.

For the Respondent (s) : Mr. J. Handique, Jr. Govt. Advocate.
Mr. K.M.Hasan, Advocate.

Date of hearing & Judgment : **16.11.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed by the Petitioner seeking a direction upon the concerned Respondent Authorities for payment of the ex-gratia compensation a of Rs.5 lakhs under the Government of Assam to the martyrs family.

2. The facts as could be discerned from the materials on record reveals that the Petitioner admittedly is the daughter of Late Loknath Saikia who was killed by the police when he was participating in the Assam movement on 30.11.1981. The Petitioner on coming to learn about the said ex-gratia compensation scheme of the Government of Assam applied for the said grant of Rs. 5 lakhs but the same was refused on the ground that the said amount have been already disbursed to the Respondent No. 4 who is the brother of Late Loknath Saikia. It is under such circumstances that the instant writ petition has been filed. The Petitioner in the said writ petition have enclosed the certificate issued by Additional Deputy Magistrate, Nagaon dated 13.08.2017 issued in pursuance to Rule 2(a) of the Assam Public Service (Preferential Appointment) Rules, 1999 certifying that her father was killed in connection with the participation in the

Assam movement on the problems of foreigners and that the Petitioner was the daughter of Late Loknath Saikia.

3. Pursuant to the filing of the instant writ petition, the Respondent No. 4 had filed an affidavit-in-opposition, wherein at paragraph 6 he had duly admitted that he had received the said amount of Rs. 5 lakhs and further that he never made any claim for the said amount. It was further mentioned by the Respondent No. 4 in his affidavit that the Petitioner's mother got married with another person immediately after the demise of the brother of the Respondent No.4 and the Petitioner also went with her mother before the grant of the additional exgratia amount of Rs. 5 lakhs by the authority. It was also mentioned in the said affidavit that out of the amount of Rs. 5 lakhs so received in the month of December, 2016, the Respondent No. 4 constructed a monument in memory of his brother Late Loknath Saikia in the courtyard of the Respondent's house by spending an amount of Rs. 2 lakhs and further donated an amount of Rs. 1,50,000/- for the development of Shiv Mandir of Brahmachari Satra on 01.02.2017. Further to that, an amount of Rs.10,000/- was donated for development of a temple (Namgarh) of Brahmachari Satra in the month of February, 2017.

4. The Petitioner filed an affidavit-in-reply to the affidavit-in-opposition denying the contents of the said affidavit-in-opposition and stating inter alia that the amount so paid and/or donated is nothing but absurd and without the knowledge of the Petitioner.

5. The records further reveals that the affidavit-in-opposition was filed by the Respondent No. 1 through the Deputy Secretary to the Government of Assam, Implementation of Assam Accord Department. In the said affidavit-in-opposition, it was mentioned that the payment was made to the Respondent

No. 4 on the basis of a report dated 25.11.2016 received from the Respondent No. 2. It was further mentioned that the payment was made to the Respondent No. 4 through the RTGS but later on 27.12.2016, a Communication was received from the Respondent No. 2 stating the name of the Petitioner as the next of the kin of Late Loknath Saikia. It was further stated that since the amount of ex-gratia was already paid to the Respondent No. 4, the question of payment to another beneficiary did not arise.

6. This Court at this stage also finds it relevant to take note of the enclosures to the said affidavit filed by the Respondent No. 1. Annexure-A of the said affidavit-in-opposition is a Communication dated 25.11.2016 issued by the Deputy Commissioner, Nagaon whereby the list of NOKs of the martyrs of Assam falling under Nagaon District was enclosed. The list upon being perused reveals that against the martyr Late Loknath Saikia, the name of the Respondent No. 4 was shown alongwith his address, mobile number and bank account details. Annexure-B is a Communication dated 27.12.2016 a month's later issued by the same Deputy Commissioner, Nagaon to the Joint Secretary to the Govt. Assam intimating the names of various next of kins of the martyrs of Assam agitation falling under Nagaon District whose ex-gratia sanction amount sanctioned/Momento have not been received by the next of kin concerned for the reasons shown against their names. The list enclosed upon being perused reveals that as regards the Late Loknath Saikia, the name of the Petitioner was shown as a daughter alongwith his bank details and in the remarks column, it was mentioned as "NOK changed".

7. This Court had taken up the matter on 12.10.2023 and on that day this Court sought for certain instructions from the District Commissioner, Nagaon as to under what basis the Respondent No. 4 was paid the ex-gratia amount. This

Court also sought for the instructions as to whether the payment was made on the basis of the next of kin certificate produced by the Respondent No. 4 and if so, the said details may be mentioned in the affidavit to be filed by the District Commissioner, Nagaon. This Court further enquired with the District Commissioner, Nagaon as to what steps the said authority would take if the amount of ex-gratia is paid to the wrong beneficiary.

8. Today when the matter was taken up, Mr. J. Handique, the learned Junior Government Advocate have placed before this Court the instructions as sought for vide the order dated 12.10.2023. From the said instructions, it reveals that Late Loknath Saikia was killed in the Assam Agitation 83 on 30.11.1981. It was further mentioned that the Circle Officer, Samaguri Revenue Circle have reported that the wife of Late Loknath Saikia namely Premolata Saikia was appointed in a Government job and she got married and used to reside at her second matrimonial home. It was further mentioned that there was no Communication between the said Premolata Saikia and other family members of Late Loknath Saikia. Further to that, it was also mentioned that in order to pay tribute to the martyrs who sacrificed their life during the Assam movement "Shraddhanjali Programme" was organized centrally by the Implementation of the Assam Accord Department, Government of Assam on 10.12.2016 at Khanapara Veterinary College ground to honour the families of the martyrs and extend financial assistance to them. Accordingly, the Principal Secretary, Govt. of Assam, Implementation of Assam Accord Department issued a letter to the Respondent No. 4 to attend the said meeting and accordingly Rs.5 lakhs was sanctioned in his favour as additional ex-gratia grant to the martyrs family. It was also mentioned that no next of kin certificate was issued in the name of the Respondent No. 4 by the District Authority as heirs of Late Loknath Saikia. The

said instructions dated 02.11.2023 which have been furnished before this Court by Mr. J. Handique, the learned Junior Government Advocate during the course of hearing is kept on record and marked with the letter "X".

9. From the above materials on record, it therefore transpires that the Petitioner is the next of kin of Late Loknath Saikia is not in dispute and this very aspect of the matter was also brought to the attention of the authorities concerned by the Deputy Commissioner, Nagaon as far back as on 27.12.2016. This Court have also enquired with the learned counsels appearing on behalf of the Respondent Department as to on what basis the ex-gratia amount is paid. It was submitted at the bar by the learned counsels appearing on behalf of the Respondent Department that the said ex-gratia amount are being paid on the basis of next of the kin certificate issued by the Office of the Deputy Commissioner.

10. From the facts narrated hereinabove, it reveals that the Respondent No. 4 was paid the ex-gratia amount by the Respondent Authorities on its own accord without the next of kin certificate being produced. It further reveals from the instructions which have been placed before this Court during the course of hearing that the amount was disbursed to the Respondent No. 4 at the own volition of the Respondent Authorities. However, the entitlement in respect to the said amount was of the Petitioner who admittedly is the daughter of Late Loknath Saikia. Under such circumstances, this Court is of the opinion that the Respondent Authorities cannot deprive the Petitioner of the grant of ex-gratia amount of Rs.5 lakhs on account of their fault of disbursing the said amount wrongfully to the Respondent No. 4.

11. Accordingly, this Court therefore directs the Respondent Nos. 1 & 2 to take appropriate steps so that the amount of Rs.5 lakhs is disbursed to the

Petitioner within a period of 60 days from the date of submission of a certified copy of this judgment to the Commissioner and Secretary to the Government of Assam, Assam Accord Implementation Department as well as the Deputy Commissioner, Nagaon.

12. Before parting with the records, this Court finds it also relevant to take note of the submission of Mr. J. Handique, the learned Junior Government Advocate appearing on behalf of the Respondents that liberty may be given to the Respondent Authorities to recover the said amount from the Respondent No. 4. This Court taking into account that the amount was disbursed by the Respondents on their own volition that too without a NOK certificate would not like to make any observations on the said aspect of the matter and it shall be within the wisdom of the Respondent Authorities to take such steps as deemed fit.

13. With the above observations and directions, the instant writ petition stands disposed.

JUDGE

Comparing Assistant