

GAHC010025972020



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

Case No. : WP(C)/806/2020

ANITA VERMA
D/O- SRI BALKRISHAN VERMA, R/O- 23 PRATIKSHA, KHARGHULI
RIVERSIDE, GUWAHATI- 781004, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT OF ASSAM, HOME
AND POLITICAL DEPTT, DISPUR, GUWAHATI- 781006, DIST- KAMRUP(M),
ASSAM

2:THE COMMISSIONER AND SECRETARY
FINANCE (ESTT B) DEPTT
GOVT OF ASSAM
DISPUR
GUWAHATI- 781006
DIST- KAMRUP(M)
ASSAM

3:THE STATE COORDINATOR
NRC
ASSAM
1ST FLOOR
ACHYUT PLAZA
G S ROAD
BHANGAGARH
GUWAHATI- 781005
ASSAM

4:THE FINANCE AND ACCOUNTS OFFICER
NRC
ASSAM

1ST FLOOR
ACHYUT PLAZA
GS ROAD
BHANGAGARH
GUWAHATI- 781005
ASSA

Advocate for the Petitioner : MR. P N GOSWAMI

Advocate for the Respondent : GA, ASSAM

B E F O R E
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

08.05.2024

- 1.** Heard Mr. K.P. Pathak, learned counsel for the petitioner. Also heard Ms. U. Das, learned Addl. Senior Government Advocate for respondent No. 1 and Mr. A. Chaliha, learned Standing Counsel for respondent No. 2, Finance Department.
- 2.** By way of this instant writ petition, the petitioner is seeking release of the outstanding dues in terms of letter of appointment dated 10.07.2019 read with Notification dated 07.09.2016 on account of her fees and expenses for her services rendered as Standing Counsel, NRC, Assam before this Hon'ble High Court.
- 3.** The case of the petitioner is that pursuant to the direction of this Court in WP(C) No. 7277 of 2017 vide order dated 01.12.2017, it was imperative that the Standing Counsel for the National Registrar of Citizens should be present before the Hon'ble Court regularly in order to assist the Court with matters which pertains it.
- 4.** In view of the aforesaid direction, the NRC authorities requested the petitioner to take-up the role of Standing Counsel of NRC authority from the

period dated 01.12.2017, which she accepted.

5. Thereafter the petitioner was formally appointed as Standing Counsel for State Coordinator, NRC in NRC related cases w.e.f. the date of 01.12.2017 in matters pertaining to this Court vide order dated 10.07.2019.

6. In the aforesaid order it was further clarified that the fees structure of the petitioner shall be in terms of the notification dated 07.09.2016.

7. Accordingly, the petitioner has been rendering legal services to the NRC authorities since December, 2017 and bills to that effect have been submitted before the NRC authorities. However, the respondent authority has paid Rs. 20,74,770/- after deduction of TDS out of the total bill amount Rs. 1,87,57,400/-, thereby leaving a balance due amount of Rs. 1,64,52,100/-. In view of the aforesaid non-release of the outstanding professional dues despite of several representations, the instant writ petition has been filed.

8. Mr. K.P. Pathak, learned counsel for the petitioner submits that despite the clear terms of appointment, the entire bill of the petitioner for the services rendered before this Court in cases relating to NRC has not been paid. He further submits that the action of the NRC authorities, in non-releasing the outstanding amount to the petitioner pursuant to the clear appointment order amounts to arbitrary and malafide exercise of power.

9. Ms. U. Das, learned Addl. Senior Government Advocate on the other hand draws the attention of this Court to the affidavit-in-opposition filed on 03.05.2023 wherein the State authorities have taken the stand that the petitioner is not entitled for any bill against discharging duties as the Standing Counsel for NRC since 01.12.2017 as the same has to be paid by Sri Prateek Hajela, former State Coordinator NRC, Assam from his own pocket as he has

appointed her in his personal capacity as his counsel to represent him before this Court in NRC matters. Therefore she is not entitled for any remuneration from the State Government.

10. Mr. A. Chaliha, learned Standing Counsel, Finance submits that he has received no instruction to object to the prayer made in the writ petition.

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

12. The issue that falls for determination in this writ petition is as whether the State NRC Department has any liability to pay for the legal services rendered by the petitioner in terms of the appointment order dated 10.07.2019. In order to address the aforesaid issue it would be pertinent to reproduce the appointment order dated 10th July, 2019 for ready reference.

“OFFICE OF THE STATE COORDINATOR, NRC

ACHYUT PLAZA (1ST FLOOR), BHARALUPAR, BHANGAGARH, GUWAHATI 781006

Dated Guwahati, the 10th July, 2019

No. SPMU/NRC/Court Case/210/2015/Pt.IV/276

*From : Prateek Hajela, IAS
State Coordinator, NRC. Assam and
Principal Secretary to the Govt. of Assam, Home and Political
Department*

*To : Smt. Anita Verma,
Advocate, Gauhati High Court*

Sub : Regarding engagement of Standing Counsel.

*Ref : 1) Order of Hon'ble Gauhati High Court in WP(C) 7277/17 &
WP(C)7267/17 Dtd 1-12-2017*

2) Your letter No. GHC/AV/NRC/2018, Dtd. 1-6-2018.

Madam,

In pursuance to the order of the Hon'ble Gauhati High Court dated 01-12-2017 in

WP(C) 7277/2017 and 7267/2017, you are hereby engaged as Standing Counsel for State Coordinator, NRC in NRC related cases with effect from the date of said order i.e., 01-12-2017. You are requested to take action as per order of the Hon'ble Gauhati High Court and ensure the following works are attended from your end.

- *Accepting new writ petition copies at the Hon'ble Gauhati High Court.*
- *Appearance in the matters as listed in the daily Cause List.*
- *A daily statement is to be prepared on the status of the matters taken up for consideration during the day which is to be forwarded to the State Coordinator, NRC.*
- *New Writ petitions filed during the day are served as per directions of the order dated 01-12-2017 of the Hon'ble Court.*
- *Writ petition copies/ Writ appeal copies/ review petitions along with the affidavits filed prior to 01-12-2017 are to be obtained as certified copies or Photostat copies from Hon'ble Gauhati High Court.*
- *A complete dedicated team including two juniors and an Advocate's clerk may be engaged to manage the matters related to State Coordinator, NRC, Assam as per direction contained in the Order dated 01-12-2017.*

The fee structure will be applicable as per Notification FEB.113/2015/58 dated 7th September 2016.

Yours faithfully,

*(Prateek Hajela, IAS)
State Coordinator, NRC, Assam and
Principal Secretary to the Govt. of Assam,
Home and Political Department"*

13. A perusal of the aforesaid order dated 10th July, 2019 indicates that the same is issued by the State Coordinator, NRC, Assam (Principal Secretary to the Government of Assam, Home and Political Department) in the official capacity and not in his personal capacity as submitted by Ms. U. Das, learned Additional Senior Government Advocate. It further appears that the petitioner has been engaged as Standing Counsel for the State Coordinator, NRC in NRC related cases w.e.f. 01.12.2017. The terms and conditions set out in the aforesaid

appointment order dated 10.07.2019, further indicates that the petitioner has been appointed to appear before matters pertaining to NRC before this Court. It further appears that the fee structure set out in the Notification dated 07.09.2016 is made applicable to the petitioner. In terms of the aforesaid appointment, the petitioner has been rendering professional services before this Hon'ble Court in matters pertaining to NRC. In fact it appears that pursuant to the order dated 01.12.2017 passed by this Court in WP(C) No. 7277 of 2017, the petitioner was requested by the NRC authorities to take-up the role of Standing Counsel for the NRC authority, which she accepted and started to represent the NRC authority from 01.12.2017. It further appears that though the petitioner was rendering professional services since 01.12.2017, however no formal order of appointment was issued in her favour. It appears that only on 10.07.2019 the formal appointment letter as set out above was issued, whereby her services was given retrospective effect. Accordingly, petitioner has submitted bill before the respondent authorities on different dates.

14. The details of the aforesaid bills submitted by the petitioner is set out hereunder for ready reference on the basis of a chart which is enclosed as Annexure-E to the affidavit-in-reply.

“Details of due as per Order dated 10.07, 2019 read with Finance Notification FEB 1133/2015/58 DT. 7th September, 2016.

| 2017 | |
|----------|-----------------|
| DECEMBER | Rs. 2,62,400.00 |
| | |

| | |
|-----------------------------------|-------------------------------|
| | TOTAL Rs. 2,62,400.00 |
| 2018 | |
| JANUARY | Rs. 2,98,400.00 |
| FEBRUARY | Rs. 5,53,400.00 |
| MARCH | Rs. 6,02,000.00 |
| APRIL | Rs. 6,34,700.00 |
| MAY | Rs. 7,41,500.00 |
| JUNE | Rs. 6,22,400.00 |
| JULY | Rs. 5,54,000.00 |
| AUGUST | Rs. 9,79,100.00 |
| SEPTEMBER | Rs. 9,29,600.00 |
| OCTOBER | Rs. 5,88,800.00 |
| NOVEMBER | Rs. 6,05,600.00 |
| DECEMBER | Rs. 6,20,000.00 |
| | TOTAL Rs. 77,29,500.00 |
| 2019 | |
| JANUARY | Rs. 8,82,800.00 |
| FEBRUARY | Rs. 11,93,600.00 |
| MARCH | Rs. 8,52,800.00 |
| APRIL | Rs. 5,81,600.00 |
| MAY | Rs. 8,21,600.00 |
| JUNE | Rs. 7,02,800.00 |
| JULY | Rs. 4,56,800.00 |
| AUGUST | Rs. 6,95,600.00 |
| SEPTEMBER | Rs. 8,94,800.00 |
| OCTOBER | Rs. 4,74,800.00 |
| NOVEMBER | Rs. 9,16,700.00 |
| DECEMBER | Rs. 7,94,000.00 |
| TOTAL | Rs. 92,67,900.00 |
| 2020 | |
| JANUARY | Rs. 5,12,300.00 |
| FEBRUARY | Rs. 7,05,800.00 |
| TILL MARCH 16TH | Rs. 2,79,500.00 |

| | |
|-------------|-------------------------|
| 2017 | Rs. 2,62,400.00 |
| 2018 | Rs. 77,29,500.00 |

| | |
|--------------|---------------------------|
| 2019 | Rs. 92,67,900.00 |
| 2020 | Rs. 14,97,600.00 |
| Total | Rs. 1,87,57,400.00 |

Sanctioned amount Rs. 23,05,300.00 (Vide sanction order dated 07.11.2019)

Fund transferred on 03.03.2020 Rs. 20,74,770.00 (After deduction of TDS.)

Due amount Rs. 1,64, 52,100.00

(Rupees One Crore Sixty-Four Lakhs Fifty Two Thousand One Hundred only)”

15. A perusal of the aforesaid chart indicates that the respondent has transferred an amount of Rs. 20,74,770/- after deduction of TDS to the petitioner. However, an amount of Rs. 1,64,52,100/- is still pending payment. The stand of the respondent in the affidavit-in-opposition filed on 03.05.2023 to the effect that the appointment of the petitioner was made by Sri Prateek Hajela then State Co-ordinator, NRC in his personal capacity cannot be accepted as the appointment order itself certifies that the same is issued in his official capacity.

16. Thus, the stand of the respondent to the effect that the bill submitted by the petitioner is required to be paid by Sri Prateek Hajela from his own pocket as he has appointed the petitioner to represent him in the said case before the Hon'ble Gauhati High Court in his personal capacity is totally fallacious and therefore rejected.

17. Pertinent to refer to the additional affidavit filed on behalf of the respondent Nos. 3 and 4 (the State Coordinator NRC, Assam and the Finance & Account Officer, National Registrar of Citizens, Assam) on 03.06.2022, wherein it is stated that despite of seeking post facto approval of the engagement of the petitioner from the office of the Commissioner & Secretary to the Govt. of Assam, Home & Political Department, no response has been received till date.

18. Paragraph 2 to paragraph 8 of the said affidavit is reproduced hereunder for ready reference:-

“2. That the deponent begs to state that the admissibility and payment of bills to the petitioner was taken up by the deponent with the Commissioner and Secretary to the Government of Assam Home and Political Department vide his letter dated 02.02.2021. By the said letter it was requested to take the opinion of LR-cum-Commissioner & Secretary to the Government of Assam, Judicial Department on the admissibility of fee of the petitioner.

3. That pursuant to the receipt of the aforesaid letter, the Deputy Secretary to the Government of Assam by letter dated 05.05.2021 requested the deponent to furnish information/record and clarify as to whether concurrence of the Finance Department was obtained by the then State Coordinator, NRC while engaging the petitioner as Standing Counsel.

4. That the deponent begs to state that in response to the above letter dated 05.05.2021, the Deputy Secretary to the Government of Assam, Home & Political Department was informed by the deponent by his letter dated 16.06.2021 that the post dated order relating to the engagement of the petitioner as Standing Counsel, NRC with fees structure was issued vide letter NoSPMU/NRC/Court Case/210/2015/Pt- IV/276 dated 10.07.2019. The said order was issued on the basis of Finance Department Notification No.FEB.113/2015/58 dated 07.09.2016. It was also informed that no concurrence of the Finance Department was obtained on the fee structure while engaging the petitioner. The views expressed by the LR-cum-Secretary by his letter dated 14.08.2020 was also extracted. The deponent once again requested to communicate the decision of the Government regarding the admissibility of the bills of the petitioner.

5. That consequent upon receipt of the above letter, the Deputy Secretary to the Government of Assam, Political (B) Department by her letter dated 07.09.2021 forwarded the views of the Judicial as well as the Finance Department.

6. That by the letter dated 29.10.2021 the deponent while forwarding the views expressed by the Judicial and Finance Department again requested the Commissioner & Secretary to the Government of Assam, Finance Department to give post facto approval for engaging Standing Counsel with effect from 10.07.2019 with specific fee structure as per norms of the Finance Department.

7. That the deponent begs to state that he has given further reminders to the Commissioner and Secretary to the Government of Assam Home & Political Department on 01.03.2022 and 09.05.2022 requesting amongst others to grant post facto approval of the engagement of the petitioner. However, there has been no further response from the Finance as well as the Home Department of the Government of Assam as on date.

8. That the deponent begs that unless post facto approval is received and the Finance Department to the Government of Assam takes necessary steps to release the dues of the petitioner, the State Coordinator, NRC is not in a position to release the same as the funds have to be released by the State Government.”

19. It is thus abundantly clear that the appointment of the petitioner as Standing Counsel, NRC cannot be said to be personal to the Officer concerned. The State Coordinator, NRC's aforesaid affidavit does not dispute the services rendered by the petitioner as Standing Council, State Coordinator, NRC in matters pertaining to NRC. Further, there is no dispute as regards the bill raised by the petitioner in this regard.

20. The petitioner having accepted the terms and conditions of appointment, and having rendered services cannot be deprived of the legitimate dues. It is in fact regrettable that the Govt. of Assam, Home & Political Department is depriving the legitimate dues of the petitioner despite rendering legal services in matters pertaining to NRC.

21. Thus, there being no dispute otherwise to the services rendered by the petitioner as Standing Counsel, NRC, before this Court in matters pertaining to NRC, the bills of the petitioner is required to be paid in accordance with law.

22. In view of the aforesaid, this Court is of the considered view that the respondent authorities shall release the outstanding dues of the petitioner within a period of 3 (three) months from today in accordance with law.

23. Needless to clarify that the Commissioner & Secretary of the Govt. of Assam, Home & Political Department and the Finance Department of the Govt. of Assam shall take necessary steps to enable the State Coordinator, NRC to release the dues of the petitioner.

The matter is disposed of.

JUDGE